

EXHIBIT D (PART ONE)

Melissa Stevens

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAW FAMILY ARCHIVES, LTD., EDITH
MARCUS and META STEVENS,

Plaintiffs,

vs. 05 Civ. 3939 (CM)

CMG WORLDWIDE, INC., an Indiana
Corporation, and MARILYN MONROE, LLC,
a Delaware Limited Liability Company,

Defendants.

DEPOSITION OF MELISSA STEVENS

New York, New York

Monday, December 17, 2007

Reported by:

Adrienne M. Mignano

JOB NO. 199551

Melissa Stevens

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December 17, 2007
10:03 a.m.

Deposition of MELISSA STEVENS,
held at the offices of Loeb & Loeb, 345
Park Avenue, New York, New York,
pursuant to Notice, before Adrienne M.
Mignano, a Notary Public of the State
of New York.

Stevens
MELISSA STEVENS, called as
a witness, having been duly sworn by a
Notary Public, was examined and
testified as follows:

EXAMINATION BY
MR. SLOTNICK:

Q. Good morning, Ms. Stevens.

A. Good morning.

Q. My name is Barry Slotnick. I
represent Marilyn Monroe LLC, and you are
here pursuant to a notice, which we will
mark in a few moments, to testify with
respect to the activities of Shaw Family
Archives, Ltd.

I may from time to time refer to
it is SFA, and presumably you will
understand what that means.

Have you ever had your deposition
taken before?

A. No.

Q. There are actually very few rules.

I'm going to ask a question. To
the best of your ability, you'll answer
the question. You'll answer orally.

APPEARANCES:

LAW OFFICES OF CHRISTOPHER SERBAGI
Attorneys for Plaintiffs
488 Madison Avenue
Suite 1120

New York, New York 10022

BY: CHRISTOPHER SERBAGI, ESQ.
DAVID MARCUS, ESQ.

LOEB & LOEB LLP

Attorneys for Marilyn Monroe LLC
345 Park Avenue

New York, New York 10154

BY: BARRY I. SLOTNICK, ESQ.

BY TELEPHONE:

THEODORE J. MINCH

Attorney for Defendant, CMG Worldwide, Inc.

Stevens

audibly so that the reporter can take it
down. Nodding your head, shaking your
head is good for me, but really doesn't do
much for the court reporter.

I would ask you to answer to the
best of your knowledge. If it is not to
the best of your knowledge, please
indicate. I'm sure your lawyers have
already indicated this to you, but it is
probably best for you to wait to hear my
entire question both so you'll understand
the question and so they will have an
opportunity to object to a question.

I have your name. Can you provide
your business address, please?

A. 143 Independent Avenue, Tappan,
New York, 10983.

Q. And for whom do you work?

A. I work for Shaw Family Archives.

Q. And how long have you worked for
SFA?

A. I was officially hired two weeks
ago as an operations manager.

Q. What is an operations manager?

2 (Pages 2 to 5)

ESQUIRE DEPOSITION SERVICES, LLC.

1-800-944-9454

Melissa Stevens

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<p>1 Stevens</p> <p>2 A. I oversee the daily functioning of</p> <p>3 our business imaging personnel. I assign</p> <p>4 jobs to particular people amongst other</p> <p>5 things.</p> <p>6 Q. You said that you were officially</p> <p>7 hired two weeks ago. Have you -- were you</p> <p>8 unofficially hired at another time?</p> <p>9 A. Well, I've been involved in the</p> <p>10 business. I'm a member of the family.</p> <p>11 Q. You anticipated my next question.</p> <p>12 I know your last name is Stevens.</p> <p>13 I take it you are related to one of the</p> <p>14 parties in this lawsuit?</p> <p>15 A. Yes, I am.</p> <p>16 Q. Might you be her daughter?</p> <p>17 A. I am.</p> <p>18 Q. Prior to two weeks ago, what were</p> <p>19 your relationship, other than family</p> <p>20 relationships, what was your relationship</p> <p>21 to SFA?</p> <p>22 A. I followed the business operations</p> <p>23 for a number of years. I have inquired</p> <p>24 with people involved in the business how</p> <p>25 things have been going.</p>	<p>1 Stevens</p> <p>2 production company for the Sopranos for</p> <p>3 the entire duration of the show?</p> <p>4 A. No, I was not.</p> <p>5 Q. How long were you employed by the</p> <p>6 Sopranos production company?</p> <p>7 A. Approximately two years.</p> <p>8 Q. Prior to that?</p> <p>9 A. Prior to that, I was employed by</p> <p>10 the Rome show, also an HBO production.</p> <p>11 Q. In a similar capacity?</p> <p>12 A. Related, but not the same</p> <p>13 position.</p> <p>14 Q. Having nothing to do with</p> <p>15 licensing of photographs?</p> <p>16 A. The job I did for the Rome show?</p> <p>17 Q. Yes.</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 Q. You can answer.</p> <p>20 A. It did not have to do with</p> <p>21 licensing of photographs.</p> <p>22 Q. And prior to Rome?</p> <p>23 A. Prior to Rome, I believe I worked</p> <p>24 on a film called The Life Aquatic.</p> <p>25 Q. Prior to that?</p>
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<p>1 Stevens</p> <p>2 Q. Would it be accurate to</p> <p>3 characterize SFA as a family business?</p> <p>4 A. Yes.</p> <p>5 Q. And you're part of the family?</p> <p>6 A. That's correct.</p> <p>7 Q. So you have an interest in the</p> <p>8 business?</p> <p>9 A. Absolutely.</p> <p>10 Q. Prior to two weeks ago, where were</p> <p>11 you employed?</p> <p>12 A. Could you specify the question?</p> <p>13 Q. Sure.</p> <p>14 You said you started officially</p> <p>15 two weeks ago as an employee of SFA, and</p> <p>16 I'm asking where you were employed before</p> <p>17 two weeks ago?</p> <p>18 A. My most recent job prior to being</p> <p>19 hired as the operations manager was with</p> <p>20 the Sopranos television show.</p> <p>21 Q. In what capacity?</p> <p>22 A. I was a locations coordinator.</p> <p>23 Q. And were you employed by the</p> <p>24 Sopranos for -- that sounds bad.</p> <p>25 Were you employed by the</p>	<p>1 Stevens</p> <p>2 A. Prior to that, I believe I worked</p> <p>3 on a film called The Exorcist.</p> <p>4 Q. Not the original?</p> <p>5 A. No.</p> <p>6 Q. As I get older, I get very bad at</p> <p>7 figuring out people's ages.</p> <p>8 When did you graduate from</p> <p>9 college?</p> <p>10 A. I graduated in the year 2000.</p> <p>11 Q. So I can stop asking about jobs</p> <p>12 that went before that.</p> <p>13 Where did you go to school?</p> <p>14 A. I went to Wesley.</p> <p>15 MR. SLOTNICK: I'm going to ask</p> <p>16 the reporter to mark as Defendants'</p> <p>17 Exhibit 1 a notice of deposition.</p> <p>18 (Defendants' Exhibit 1, Notice of</p> <p>19 Deposition, marked for identification,</p> <p>20 as of this date.)</p> <p>21 BY MR. SLOTNICK:</p> <p>22 Q. Ms. Stevens, I'm going to ask you</p> <p>23 to look at what has been marked as</p> <p>24 Defendants' Exhibit 1, and ask if you have</p> <p>25 seen that before.</p>

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Melissa Stevens

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<p>1 Stevens</p> <p>2 A. Yes, I have.</p> <p>3 Q. And when was the first time you</p> <p>4 saw it?</p> <p>5 A. Approximately in this past week.</p> <p>6 Q. I'm sorry?</p> <p>7 A. Approximately in the past week.</p> <p>8 Q. Okay.</p> <p>9 And under what circumstances did</p> <p>10 you see it?</p> <p>11 A. Could you be a little more</p> <p>12 specific?</p> <p>13 Q. Okay.</p> <p>14 Who showed it to you?</p> <p>15 A. My attorneys.</p> <p>16 Q. Did you review it at that time?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And after reviewing the notice,</p> <p>19 did you do anything to prepare for this</p> <p>20 deposition?</p> <p>21 A. Yes, I did.</p> <p>22 Q. What did you do?</p> <p>23 A. I read a lot of company files that</p> <p>24 are available to me. I also spoke to</p> <p>25 relevant parties, including members of</p>	<p>1 Stevens</p> <p>2 Q. Did you speak with anyone else?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Who?</p> <p>5 A. I spoke to Michelle Minieri from</p> <p>6 Bradford Licensing.</p> <p>7 Q. And?</p> <p>8 A. And anyone else?</p> <p>9 Q. Yes.</p> <p>10 A. I probably spoke to other contacts</p> <p>11 from our business.</p> <p>12 Q. People outside the company?</p> <p>13 A. Correct.</p> <p>14 Q. Let's go through the list of the</p> <p>15 people that you have mentioned.</p> <p>16 Edith Marcus and Meta Stevens are</p> <p>17 the daughters of Sam Shaw?</p> <p>18 A. That is correct.</p> <p>19 Q. Who is Susan Shaw?</p> <p>20 A. Susan Shaw is the wife, or now</p> <p>21 widow of Larry Shaw.</p> <p>22 Q. And Larry Shaw was Sam's son?</p> <p>23 A. That is right.</p> <p>24 Q. And who is Charles Marcus?</p> <p>25 A. Charles Marcus is the husband of</p>
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<p>1 Stevens</p> <p>2 Shaw Family Archives.</p> <p>3 Q. Let's start with that one first.</p> <p>4 Who were the parties that you</p> <p>5 spoke to?</p> <p>6 A. I spoke to Edith Marcus. Meta</p> <p>7 Stevens. Susan Shaw, our accountant.</p> <p>8 Q. Anyone else?</p> <p>9 A. Charles Marcus.</p> <p>10 MR. SERBAGI: I'll note for the</p> <p>11 record that this Exhibit 1 is</p> <p>12 unsigned.</p> <p>13 MR. SLOTNICK: I trust that you</p> <p>14 have received a signed copy?</p> <p>15 MR. SERBAGI: I have.</p> <p>16 MR. SLOTNICK: Thank you for</p> <p>17 noting it for the record. I'm</p> <p>18 perfectly happy to sign all the</p> <p>19 copies.</p> <p>20 MR. SERBAGI: But I'm not the</p> <p>21 witness, so --</p> <p>22 MR. SLOTNICK: Life would be so</p> <p>23 much easier if the lawyers became the</p> <p>24 witnesses, perhaps.</p> <p>25 BY MR. SLOTNICK:</p>	<p>1 Stevens</p> <p>2 Edith Marcus.</p> <p>3 Q. You said that you read certain</p> <p>4 company files. Can you identify which</p> <p>5 files you reviewed?</p> <p>6 A. Yes, I can.</p> <p>7 Q. Will you, please?</p> <p>8 A. I will.</p> <p>9 I reviewed a lot of</p> <p>10 correspondence, including e-mails, faxes,</p> <p>11 et cetera. I also looked at agreements</p> <p>12 that we have, contracts. I also looked at</p> <p>13 files related to our accounting</p> <p>14 statements. Other documents like that.</p> <p>15 Q. In connection with the agreements,</p> <p>16 can you describe the nature of those</p> <p>17 agreements?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 Q. I'll specify.</p> <p>20 Were these agreements between SFA</p> <p>21 and third-party licensees?</p> <p>22 MR. SERBAGI: Objection to form.</p> <p>23 Q. You can answer.</p> <p>24 A. Some of them.</p> <p>25 Q. And what were the others</p>

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<p>1 Stevens</p> <p>2 generally?</p> <p>3 MR. SERBAGI: Objection to form.</p> <p>4 Q. To the best of your recollection.</p> <p>5 MR. SERBAGI: Objection to form.</p> <p>6 A. For example, there are other ones</p> <p>7 that might be between SFA and -- could you</p> <p>8 repeat the question?</p> <p>9 Q. I'll ask a different question.</p> <p>10 I'm trying to understand the</p> <p>11 nature of the contracts that you looked</p> <p>12 at.</p> <p>13 You have indicated that some are</p> <p>14 with licensees. I am trying to determine</p> <p>15 if the agreements that you looked at were</p> <p>16 between SFA and entities that would use an</p> <p>17 SFA photograph as opposed to some other</p> <p>18 kind of agreement?</p> <p>19 MR. SERBAGI: Objection to form.</p> <p>20 Q. You can answer.</p> <p>21 A. I have looked at agreements that</p> <p>22 are between SFA and companies that would</p> <p>23 use our images.</p> <p>24 Q. And were there agreements other</p> <p>25 than that type of agreement that you</p>	<p>1 Stevens</p> <p>2 signing on behalf of SFA.</p> <p>3 Q. Do you know when SFA was formed?</p> <p>4 A. Yes, I do.</p> <p>5 Q. When was that?</p> <p>6 A. 2002.</p> <p>7 Q. So were all of the agreements that</p> <p>8 you looked at executed from 2002 on?</p> <p>9 MR. SERBAGI: Objection.</p> <p>10 A. To the best of my recollection,</p> <p>11 yes.</p> <p>12 Q. To the best of your recollection,</p> <p>13 did you look at any agreements that were</p> <p>14 entered into by Sam Shaw with companies or</p> <p>15 individuals who engaged his services?</p> <p>16 MR. SERBAGI: Objection to form.</p> <p>17 A. Yes.</p> <p>18 Q. So those agreements would have</p> <p>19 predated 2002?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall how far back they</p> <p>22 may have predated 2002?</p> <p>23 A. If you supply me with a specific</p> <p>24 example, I could try and give you a date.</p> <p>25 Q. Okay.</p>
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<p>1 Stevens</p> <p>2 looked at?</p> <p>3 MR. SERBAGI: Objection to form.</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Okay.</p> <p>6 Were all the jobs that you looked</p> <p>7 at agreements that were looked into by SFA</p> <p>8 as one of the parties?</p> <p>9 A. Can you repeat the question?</p> <p>10 Q. Sure.</p> <p>11 Were all of the agreements that</p> <p>12 you looked at agreements in which SFA was</p> <p>13 one of the contracting parties?</p> <p>14 A. To the best of my recollection,</p> <p>15 yes, but I would qualify by saying the</p> <p>16 agreements were often between someone</p> <p>17 acting on behalf of SFA, so, for example,</p> <p>18 Larry Shaw.</p> <p>19 Q. In the instance where Larry Shaw</p> <p>20 had signed an agreement, was he signing on</p> <p>21 behalf of SFA or was he signing in his own</p> <p>22 individual capacity?</p> <p>23 MR. SERBAGI: Objection to the</p> <p>24 form.</p> <p>25 A. It is my understanding that he was</p>	<p>1 Stevens</p> <p>2 Did you look at any agreements</p> <p>3 between Sam Shaw and Charles Feldman?</p> <p>4 MR. SERBAGI: Objection.</p> <p>5 A. You could refresh my recollection.</p> <p>6 I don't believe that I have seen a</p> <p>7 specific document between those two</p> <p>8 people, however, I'm happy to look at a</p> <p>9 document if you have one.</p> <p>10 Q. Let's look at something else for a</p> <p>11 moment.</p> <p>12 You stated that SFA was formed in</p> <p>13 2002, I believe?</p> <p>14 A. Yes.</p> <p>15 Q. And is it a corporation?</p> <p>16 A. Yes.</p> <p>17 Q. And is it a New York corporation?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know who were the</p> <p>20 parties who formed SFA?</p> <p>21 A. Yes.</p> <p>22 Q. Who were they?</p> <p>23 A. Could you specify your question?</p> <p>24 Q. There were people who were</p> <p>25 responsible for incorporating and in</p>

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<p>1 Stevens</p> <p>2 forming SFA. You indicated that you know</p> <p>3 who they are, and I'm asking, who they</p> <p>4 are?</p> <p>5 A. Well, I know who the owners of SFA</p> <p>6 are, if that's what you're asking.</p> <p>7 Q. I'm not sure if I am, but that's a</p> <p>8 good enough question to answer.</p> <p>9 So who are the owners of SFA?</p> <p>10 A. As of today?</p> <p>11 Q. Yes, as of today.</p> <p>12 A. Myself, Melissa</p> <p>13 Stevens, Meta Stevens, Cindy Conti, Robert</p> <p>14 Conti, Edith Marcus, David Marcus, Rebecca</p> <p>15 Marcus, the estate of Larry Shaw.</p> <p>16 Q. Do you know who the original</p> <p>17 owners of SFA were?</p> <p>18 A. I'm not sure what you mean by</p> <p>19 original.</p> <p>20 Q. Who were the owners in 2002?</p> <p>21 A. As of what date?</p> <p>22 Q. The date of formation.</p> <p>23 A. I would have to check my company</p> <p>24 records, however, I believe it was Larry</p> <p>25 Shaw, Edith Marcus, and Meta Stevens.</p>	<p>1 Stevens</p> <p>2 A. Sure.</p> <p>3 Q. Please.</p> <p>4 A. Generally we license the use of</p> <p>5 our images. We maintain a photographic</p> <p>6 collection. We promote our photographic</p> <p>7 collection and the photographers whose</p> <p>8 work we have. We do exhibitions, amongst</p> <p>9 other activities.</p> <p>10 Q. What photographers do you have</p> <p>11 other than Sam Shaw?</p> <p>12 A. Larry Shaw.</p> <p>13 Q. Is there anyone else?</p> <p>14 A. We might have in our collection</p> <p>15 photographs by other photographers. It's</p> <p>16 a possibility.</p> <p>17 Q. Would it be accurate to say that</p> <p>18 the majority of photographs at SFA were</p> <p>19 photographs taken by Sam Shaw?</p> <p>20 A. Yes, that's accurate.</p> <p>21 Q. Do you know whether Sam Shaw</p> <p>22 operated under some d/b/a or corporation</p> <p>23 during his lifetime?</p> <p>24 A. Could you explain what d/b/a</p> <p>25 stands for?</p>
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<p>1 Stevens</p> <p>2 MR. SERBAGI: I don't mean to</p> <p>3 interrupt, but it is incredibly hot.</p> <p>4 Is there anything that we can do?</p> <p>5 (Discussion held off the record)</p> <p>6 Q. For the sake of brevity, would it</p> <p>7 be accurate to say that the original</p> <p>8 owners of SFA and the current owners of</p> <p>9 SFA are all related in one way or another</p> <p>10 to Sam Shaw?</p> <p>11 A. That is correct.</p> <p>12 Q. And originally it was the three</p> <p>13 children of Sam Shaw?</p> <p>14 A. Originally?</p> <p>15 Q. In 2002.</p> <p>16 A. In 2002, yes.</p> <p>17 Q. And Larry, Edith and Meta were</p> <p>18 all -- were Sam's only children?</p> <p>19 A. To my knowledge, yes.</p> <p>20 Q. I won't ask if you're the only</p> <p>21 offspring of --</p> <p>22 When did Sam Shaw die?</p> <p>23 A. 1999.</p> <p>24 Q. Can you explain generally what the</p> <p>25 business of SFA is?</p>	<p>1 Stevens</p> <p>2 Q. Sure, I'm sorry. I'm just trying</p> <p>3 to establish what, if any, business entity</p> <p>4 Sam Shaw operated during his lifetime.</p> <p>5 A. If you could specify that</p> <p>6 question, it would help me.</p> <p>7 Q. Do you know of any corporation or</p> <p>8 other business entity that Sam was</p> <p>9 involved with during his lifetime to</p> <p>10 exploit his photographs?</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 A. I am aware of a business</p> <p>13 arrangement that Sam Shaw had with Ian</p> <p>14 Woodner.</p> <p>15 Q. Who is Ian Woodner?</p> <p>16 A. It's my understanding that Ian</p> <p>17 Woodner was an art collector, also a</p> <p>18 businessman, and also a friend of Sam</p> <p>19 Shaw.</p> <p>20 Q. You stated before that part of</p> <p>21 your job is to take care of some of the --</p> <p>22 I think you said daily functions of SFA.</p> <p>23 Can you explain what those daily</p> <p>24 functions are?</p> <p>25 A. Sure.</p>

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<p>1 Stevens</p> <p>2 Various correspondence between SFA</p> <p>3 and people we do business with, including</p> <p>4 e-mail, faxing, phone calls. I would say</p> <p>5 on a daily basis, we refer to our archive,</p> <p>6 so there is a certain maintenance of the</p> <p>7 photographs that we do fairly regularly.</p> <p>8 I also oversee new deals on the</p> <p>9 table, let's say.</p> <p>10 Q. How many other people are employed</p> <p>11 by SFA?</p> <p>12 A. How many other people?</p> <p>13 Q. Besides yourself.</p> <p>14 A. Besides myself?</p> <p>15 Q. Yes.</p> <p>16 A. Well, Edith Shaw, Meta Stevens,</p> <p>17 Susan Shaw. We have an accountant.</p> <p>18 Q. You mentioned your office is in</p> <p>19 Tappan?</p> <p>20 A. Yes.</p> <p>21 Q. How many people come to work every</p> <p>22 day in Tappan to work for SFA?</p> <p>23 A. That depends.</p> <p>24 Q. On what?</p> <p>25 A. Every day is different.</p>	<p>1 Stevens</p> <p>2 houses the collection, she keeps track of</p> <p>3 our inventory. And she often facilitates</p> <p>4 the use of the images in our collection.</p> <p>5 Q. What is the business function for</p> <p>6 Meta Stevens?</p> <p>7 A. She also has a variety of tasks</p> <p>8 that she does on a daily basis. I would</p> <p>9 say she has a role as a public relations</p> <p>10 correspondent for Shaw Family Archives.</p> <p>11 She is in contact with a lot of the people</p> <p>12 that we do business with.</p> <p>13 Q. What role did Larry Shaw play in</p> <p>14 the company prior to his passing away?</p> <p>15 A. Larry oversaw everything. He was</p> <p>16 really running the company.</p> <p>17 Q. We'll talk a little bit more about</p> <p>18 the Shaw archives.</p> <p>19 Is there a physical archive of</p> <p>20 photographs?</p> <p>21 A. Yes, there is.</p> <p>22 Q. And where is that archive</p> <p>23 maintained?</p> <p>24 A. At the house of Edith Shaw or</p> <p>25 Edith Shaw Marcus.</p>
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<p>1 Stevens</p> <p>2 Q. How many people typically show up?</p> <p>3 Is there -- how many offices are there?</p> <p>4 A. Sure. We also have an office in</p> <p>5 Piermont, which is where Larry Shaw's</p> <p>6 residence is. My mother also works out of</p> <p>7 her home in New York City.</p> <p>8 Q. I hate to ask the question, what</p> <p>9 percentage of people work for the company,</p> <p>10 because you always get about a third, but</p> <p>11 maybe in this instance, it's not such a</p> <p>12 bad question.</p> <p>13 Would it be accurate to say that</p> <p>14 the more senior members of the Shaw family</p> <p>15 work either from home or from the Tappan</p> <p>16 office?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. And what are the functions of</p> <p>19 Edith Marcus?</p> <p>20 MR. SERBAGI: Objection.</p> <p>21 A. Edith Marcus does a variety of</p> <p>22 tasks, mainly, most notably, she is our</p> <p>23 archivist.</p> <p>24 Q. And what does that job entail?</p> <p>25 A. She maintains the collection, she</p>	<p>1 Stevens</p> <p>2 Q. Where is that?</p> <p>3 A. 143 Independent Avenue.</p> <p>4 Q. So the office is also her home?</p> <p>5 A. That's right.</p> <p>6 Q. And approximately how many</p> <p>7 photographs are in the archive?</p> <p>8 MR. SERBAGI: Objection.</p> <p>9 A. I really can't say. It would be</p> <p>10 difficult to estimate.</p> <p>11 Q. Well, can you estimate the</p> <p>12 physical space that the archive takes?</p> <p>13 A. That's also a difficult answer.</p> <p>14 Q. Well, would it be bigger than this</p> <p>15 room? And I don't know what the</p> <p>16 dimensions of this room are. It will be</p> <p>17 useless to anybody other than me. Is the</p> <p>18 archive bigger than this room?</p> <p>19 A. Depending on how you would stack</p> <p>20 the photos, not necessarily.</p> <p>21 Q. But it is in a physical space?</p> <p>22 A. Sure.</p> <p>23 Q. I'm curious, is the physical space</p> <p>24 bigger than this room?</p> <p>25 A. Yes, it is.</p>

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<p>1 Stevens</p> <p>2 Q. Would it be double the space of</p> <p>3 this room?</p> <p>4 A. I really can't say. But to</p> <p>5 qualify my answer, photographs are often</p> <p>6 stored in boxes. Sometimes there is one</p> <p>7 photograph in a box. Sometimes there are</p> <p>8 many boxes are stacked on top of each</p> <p>9 other. Boxes are then on shelving units.</p> <p>10 So shelving units can be quite large.</p> <p>11 It's hard to get a sense of -- I don't</p> <p>12 really think that -- it's hard to get a</p> <p>13 sense and estimate.</p> <p>14 Q. Are the boxes of uniform size?</p> <p>15 MR. SERBAGI: Objection.</p> <p>16 A. We have multiple boxes that are</p> <p>17 the same size. But we have boxes of all</p> <p>18 different sizes.</p> <p>19 Q. Does the archive hold more than</p> <p>20 100 photographs to the best of your</p> <p>21 knowledge?</p> <p>22 A. To the best of my knowledge, we</p> <p>23 do.</p> <p>24 Q. More than a thousand?</p> <p>25 A. To the best of my knowledge, we</p>	<p>1 Stevens</p> <p>2 as photographs or as negatives or in some</p> <p>3 other format?</p> <p>4 MR. SERBAGI: Objection to form.</p> <p>5 A. Your question is general. So I'll</p> <p>6 give you a general answer.</p> <p>7 Generally speaking, our images are</p> <p>8 maintained in various forms.</p> <p>9 Q. And what are those various forms?</p> <p>10 A. We have prints, we have negatives,</p> <p>11 we have transparencies, and we have</p> <p>12 digital files, amongst probably other</p> <p>13 things.</p> <p>14 Q. Well, what are the other things</p> <p>15 that you can recall?</p> <p>16 A. I can't recall anything else right</p> <p>17 now, but it's possible that there are</p> <p>18 other ways that we maintain a collection.</p> <p>19 Q. Prints are another word for</p> <p>20 photograph, what the common person would</p> <p>21 consider a photograph?</p> <p>22 MR. SERBAGI: Objection.</p> <p>23 A. I really can't answer to what the</p> <p>24 common person would think.</p> <p>25 Q. Can you define what a print is?</p>
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<p>1 Stevens</p> <p>2 have more than one thousand.</p> <p>3 Q. More than ten thousand?</p> <p>4 A. I believe we have more than ten</p> <p>5 thousand photographs.</p> <p>6 Q. More than 100,000 photographs?</p> <p>7 A. It would be hard for me to answer</p> <p>8 that question. But to the best of my</p> <p>9 knowledge, if you could specify what you</p> <p>10 mean by photo.</p> <p>11 Q. Different images.</p> <p>12 A. Once again, it's still vague for</p> <p>13 me. What do you mean by different images?</p> <p>14 Q. Well, if each click of a lens</p> <p>15 constitutes an image, would there be --</p> <p>16 how many images would there be? That's</p> <p>17 what I mean by images,</p> <p>18 A. Sure.</p> <p>19 Based on your clarification, I</p> <p>20 would estimate that we have more than</p> <p>21 100,000 images.</p> <p>22 Q. Let's go higher. More than a</p> <p>23 quarter of a million?</p> <p>24 A. I really can't say.</p> <p>25 Q. Are the images that are maintained</p>	<p>1 Stevens</p> <p>2 A. A print to me is a piece of paper,</p> <p>3 high quality piece of paper, on which an</p> <p>4 image exists.</p> <p>5 Q. And then identify for me what you</p> <p>6 mean by negative?</p> <p>7 A. A negative would be a piece of</p> <p>8 celluloid on which an image exists in a</p> <p>9 negative format.</p> <p>10 Q. And what is a transparency?</p> <p>11 A. To the best of my knowledge, or to</p> <p>12 my knowledge, it would be or it is, I</p> <p>13 believe it is also a piece of celluloid</p> <p>14 that has a positive image on it. But I</p> <p>15 would really have to check, I think, the</p> <p>16 dictionary.</p> <p>17 Q. It's okay.</p> <p>18 Let's talk about digital files.</p> <p>19 First of all, explain to me what</p> <p>20 you mean by a digital file?</p> <p>21 A. By a digital file, I mean an image</p> <p>22 that exists in electronic format.</p> <p>23 Q. And how are those maintained?</p> <p>24 A. I'm not entirely sure what you</p> <p>25 mean by maintained, but we have -- we</p>

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<p>1 Stevens</p> <p>2 store digital files on hard drives.</p> <p>3 Q. Are those also maintained within</p> <p>4 the archive or are those maintained</p> <p>5 separately within a computer?</p> <p>6 A. I consider the digital files to be</p> <p>7 a part of our archive, but they are</p> <p>8 maintained either on a computer or on a</p> <p>9 hard drive.</p> <p>10 Q. Are the digital files</p> <p>11 reproductions of what would otherwise be</p> <p>12 maintained as either a print or negative</p> <p>13 or transparency?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. Can you repeat the question,</p> <p>16 please?</p> <p>17 Q. Yeah, I'll ask it a different way.</p> <p>18 What I'm trying to get to is</p> <p>19 whether your digital files are simply</p> <p>20 reproductions of the other formats in</p> <p>21 photographs?</p> <p>22 MR. SERBAGI: Objection to form.</p> <p>23 A. Some of our digital files are</p> <p>24 scans of our prints.</p> <p>25 Q. And others?</p>	<p>1 Stevens</p> <p>2 Q. Would they be organized by subject</p> <p>3 matter?</p> <p>4 MR. SERBAGI: Objection.</p> <p>5 A. Some of the photographs that I</p> <p>6 have seen are organized by subject matter.</p> <p>7 Q. And others are organized in some</p> <p>8 other fashion?</p> <p>9 A. It's a possibility.</p> <p>10 Q. Well, what other way have you seen</p> <p>11 them organized besides by subject matter?</p> <p>12 MR. SERBAGI: Objection. Form.</p> <p>13 A. For example, I have seen</p> <p>14 photographs organized differently than by</p> <p>15 subject matter in regards to an</p> <p>16 exhibition, for example. So in this case,</p> <p>17 if we are preparing images for the needs</p> <p>18 of that exhibition, we would organize them</p> <p>19 according to the needs of that exhibition.</p> <p>20 Q. And after the exhibition, would</p> <p>21 you still maintain them in the archive as</p> <p>22 an exhibition?</p> <p>23 MR. SERBAGI: Objection to form.</p> <p>24 A. Can you clarify your question,</p> <p>25 please?</p>
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<p>1 Stevens</p> <p>2 A. Others are not.</p> <p>3 Q. Okay.</p> <p>4 Well, where do they come from?</p> <p>5 A. I would really have to check our</p> <p>6 collection, but it is possible that in our</p> <p>7 collection we have digital files that have</p> <p>8 been moderately altered from the print.</p> <p>9 For example, if we have an old print that</p> <p>10 requires restoration, we hire somebody to</p> <p>11 digitally restore the image, so the</p> <p>12 digital file image might be different from</p> <p>13 the print.</p> <p>14 Q. I want to talk to you about how</p> <p>15 the archive is organized.</p> <p>16 Are photographs maintained -- when</p> <p>17 I say photographs, I mean prints,</p> <p>18 negatives, transparencies and digital, is</p> <p>19 there a specific form of organization for</p> <p>20 those files?</p> <p>21 A. If you could specify the question,</p> <p>22 it would help me to answer.</p> <p>23 Q. Are they organized</p> <p>24 chronologically?</p> <p>25 A. I don't believe so.</p>	<p>1 Stevens</p> <p>2 Q. Would you then put them back in</p> <p>3 subject matter files, or would you still</p> <p>4 keep them together as an exhibition file,</p> <p>5 or would you do both?</p> <p>6 MR. SERBAGI: Same objection.</p> <p>7 A. Well, once again, you would really</p> <p>8 have to clarify what you mean by images.</p> <p>9 After an exhibition -- let me back up.</p> <p>10 We submit images to an exhibition,</p> <p>11 but that does not necessarily mean we</p> <p>12 submit prints to an exhibition. So when</p> <p>13 we get images back, it may have nothing to</p> <p>14 do with the maintenance of our print</p> <p>15 archive.</p> <p>16 Q. Other than prints, how would you</p> <p>17 submit something for an exhibition?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. One possibility is the submission</p> <p>20 of digital files.</p> <p>21 Q. And those digital files would then</p> <p>22 be made available to be perceived by human</p> <p>23 beings through the computer or via screen?</p> <p>24 MR. SERBAGI: Objection to form.</p> <p>25 A. I don't understand the question.</p>

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<p>1 Stevens</p> <p>2 Q. If you're going to exhibit</p> <p>3 photographs and you provide the exhibitors</p> <p>4 with a digital file, how would those</p> <p>5 photographs, images, be made perceptible</p> <p>6 to the people coming to view the exhibit?</p> <p>7 MR. SERBAGI: Objection to form.</p> <p>8 A. If I understand your question</p> <p>9 correctly, for example, when we submit</p> <p>10 digital files, the people in charge of the</p> <p>11 exhibition would print from the digital</p> <p>12 files. The prints would then be exhibited</p> <p>13 in frames in an exhibition space, and that</p> <p>14 is how people would have access to seeing</p> <p>15 those photographs.</p> <p>16 Q. What happens to those prints after</p> <p>17 the exhibition?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. It depends.</p> <p>20 Q. Would they be returned?</p> <p>21 A. Once again, it depends. Sometimes</p> <p>22 photographs are returned, but you would</p> <p>23 have to specify your question in order for</p> <p>24 me to give you a good answer.</p> <p>25 Q. Okay.</p>	<p>1 Stevens</p> <p>2 preclude an agreement.</p> <p>3 Q. And those agreements would be in</p> <p>4 writing?</p> <p>5 A. I have seen some written</p> <p>6 agreements relating to exhibitions.</p> <p>7 Q. Are you aware of any exhibitions</p> <p>8 that are not subject of a written</p> <p>9 agreement?</p> <p>10 MR. SERBAGI: Objection to form.</p> <p>11 A. You could refresh my recollection.</p> <p>12 I cannot remember something right now of</p> <p>13 what would be -- it's a possibility, but I</p> <p>14 can't remember an instance of that.</p> <p>15 Q. Just so I'm clear, you cannot</p> <p>16 recall a situation in which there would</p> <p>17 be -- in which there wouldn't be a written</p> <p>18 agreement?</p> <p>19 MR. SERBAGI: Objection. Asked</p> <p>20 and answered.</p> <p>21 Q. Go ahead.</p> <p>22 A. I would agree with your answer to</p> <p>23 your question.</p> <p>24 Q. There you go, finally somebody who</p> <p>25 agrees with me.</p>
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<p>1 Stevens</p> <p>2 Well, you have some third-party</p> <p>3 making copies of photographs, and I want</p> <p>4 to know what the various forms of those</p> <p>5 photographs would be after the exhibition.</p> <p>6 MR. SERBAGI: Objection to form.</p> <p>7 A. I can give you an example.</p> <p>8 Q. That would be good.</p> <p>9 A. For example, if we submit digital</p> <p>10 files and this third-party that you refer</p> <p>11 to prints from those digital files and</p> <p>12 those prints are exhibited to the public,</p> <p>13 in some cases, we receive those prints</p> <p>14 that are on exhibition back. They are</p> <p>15 returned to us. But like I said, every</p> <p>16 exhibition, every deal is different.</p> <p>17 Q. And all of this would be set out</p> <p>18 in a written agreement?</p> <p>19 MR. SERBAGI: Objection.</p> <p>20 A. We would try in all of our</p> <p>21 agreements to specify the conditions.</p> <p>22 Q. So there would be an agreement</p> <p>23 relating to an exhibition?</p> <p>24 MR. SERBAGI: Objection.</p> <p>25 A. Most exhibitions that we do</p>	<p>1 Stevens</p> <p>2 Do the images that are submitted</p> <p>3 for exhibition all contain copyright</p> <p>4 notices?</p> <p>5 MR. SERBAGI: Objection. Form.</p> <p>6 A. Can you repeat the question,</p> <p>7 please?</p> <p>8 Q. Do the images that you submit for</p> <p>9 exhibition contain copyright notices?</p> <p>10 MR. SERBAGI: Objection. I want</p> <p>11 to make a statement for the record.</p> <p>12 I have allowed you to go for</p> <p>13 about an hour now with questions that</p> <p>14 have nothing whatsoever to do with the</p> <p>15 pending issues in the case. We have a</p> <p>16 motion for a protective order before</p> <p>17 Judge Fox. The subject of that</p> <p>18 protective order is that the</p> <p>19 deposition testimony be limited to the</p> <p>20 pending claims that we have -- claim</p> <p>21 that we have against you, namely, that</p> <p>22 Marilyn Monroe was domiciled in New</p> <p>23 York and your claim that the Rizzoli</p> <p>24 is in the public domain.</p> <p>25 Since you identified the</p>

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<p>1 Stevens</p> <p>2 Ballantine work, I allowed testimony</p> <p>3 as to that. I think I'm going to note</p> <p>4 for the record to the extent that</p> <p>5 anything in this deposition testimony</p> <p>6 is related to issues outside those</p> <p>7 works, that we object to that, and I</p> <p>8 ask you to limit your questioning to</p> <p>9 the pending issues in the case.</p> <p>10 MR. SLOTNICK: Number one, we</p> <p>11 disagree significantly with your</p> <p>12 characterization of what our claim is</p> <p>13 and what our 30(b)(6) is. I don't</p> <p>14 think there is any real need to have</p> <p>15 significant questioning as to whether</p> <p>16 the Rizzoli works are in the public</p> <p>17 domain, because a court of competent</p> <p>18 jurisdiction already ruled they are in</p> <p>19 the public domain.</p> <p>20 I am asking this witness about</p> <p>21 the nature of her business. Frankly,</p> <p>22 I suspect that the background is far</p> <p>23 more significant than the specifics of</p> <p>24 any photograph, whether it is limited</p> <p>25 to Rizzoli or the other book or not,</p>	<p>1 Stevens</p> <p>2 Q. Copyright notice would be a C in</p> <p>3 the circle or the word copyright with</p> <p>4 either a date or the identification of the</p> <p>5 claims, person claiming ownership.</p> <p>6 So are you familiar with that?</p> <p>7 A. I am familiar with that.</p> <p>8 Q. You have seen copyright notices?</p> <p>9 A. Yes, I have.</p> <p>10 Q. And you have seen them on</p> <p>11 photographs?</p> <p>12 A. Yes, I have.</p> <p>13 Q. And the question is: On</p> <p>14 photographs or images that are utilized by</p> <p>15 SFA, do each of them have a copyright</p> <p>16 notice on each image in some form or</p> <p>17 another?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. Could you repeat that question,</p> <p>20 please?</p> <p>21 (Record read)</p> <p>22 MR. SERBAGI: Objection to form.</p> <p>23 A. Are photographs utilized by SFA,</p> <p>24 do each of those have a copyright notice</p> <p>25 on them? Well, once again, responding to</p>
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<p>1 Stevens</p> <p>2 and I'm going to continue to ask</p> <p>3 questions regarding the background of</p> <p>4 this business so I understand the</p> <p>5 business better so we can deal with</p> <p>6 the specifics.</p> <p>7 Your request for a protective</p> <p>8 order is still merely a request. Your</p> <p>9 objection is noted. You can note it</p> <p>10 as you feel appropriate. But I'm</p> <p>11 going to ask the questions and you can</p> <p>12 object to them, and we'll let the</p> <p>13 judge and the magistrate address the</p> <p>14 issue.</p> <p>15 Is there a question pending?</p> <p>16 (Record read)</p> <p>17 MR. SERBAGI: Objection. You can</p> <p>18 answer as to the Rizzoli and</p> <p>19 Ballantine works.</p> <p>20 A. Could you specify what you mean by</p> <p>21 contain?</p> <p>22 Q. First of all, do you know what a</p> <p>23 copyright notice is?</p> <p>24 A. I'm not a copyright expert, but I</p> <p>25 am aware of the term.</p>	<p>1 Stevens</p> <p>2 your question -- let me respond this way.</p> <p>3 We do our best to protect our copyrights</p> <p>4 to all the images in our collection. But</p> <p>5 in response to your question, I find it a</p> <p>6 little unclear. Do images that we, that</p> <p>7 SFA uses --</p> <p>8 Q. Licenses, exploits through third</p> <p>9 parties?</p> <p>10 MR. SERBAGI: Objection.</p> <p>11 A. Do they contain copyright notices?</p> <p>12 Q. Yes.</p> <p>13 MR. SERBAGI: Objection.</p> <p>14 You can answer as to Rizzoli and</p> <p>15 Ballantine.</p> <p>16 A. I would really -- in regards to</p> <p>17 Rizzoli and Ballantine, you would really</p> <p>18 have to supply me with a specific example</p> <p>19 with an image from those books.</p> <p>20 Q. Okay.</p> <p>21 First of all, I assume that you</p> <p>22 are going to abide by your counsel's</p> <p>23 direction to limit your answer to Rizzoli</p> <p>24 and Ballantine?</p> <p>25 MR. SERBAGI: Objection.</p>

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<p>1 Stevens</p> <p>2 MR. SLOTNICK: I want to know</p> <p>3 what the scope of her answer is going</p> <p>4 to be. She could ignore your advice.</p> <p>5 MR. SERBAGI: Ask her questions</p> <p>6 and she'll answer them.</p> <p>7 MR. SLOTNICK: I just asked her a</p> <p>8 question.</p> <p>9 A. My attorney has advised me, and</p> <p>10 I'm going to take the advice of my</p> <p>11 attorney.</p> <p>12 Q. Okay.</p> <p>13 You stated before that you do your</p> <p>14 best to protect your rights and your</p> <p>15 images.</p> <p>16 How do you do that; how does SFA</p> <p>17 do that?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. Well, for example, we maintain</p> <p>20 records that relate to issues of</p> <p>21 copyright.</p> <p>22 Q. Such as?</p> <p>23 A. I have reviewed documents related</p> <p>24 to copyright registrations.</p> <p>25 Q. Such as?</p>	<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection.</p> <p>3 A. Once again, I'm not a copyright</p> <p>4 expert, but I have seen registrations for</p> <p>5 those two books. I cannot say, as you</p> <p>6 have said in your question, that they are</p> <p>7 for specific images. I think those were</p> <p>8 your words. I'm not sure what you mean by</p> <p>9 that. I'm happy to look at a document, if</p> <p>10 you have something in mind.</p> <p>11 Q. You have stated now several times</p> <p>12 that you are certain that you have seen</p> <p>13 registrations for the Ballantine book and</p> <p>14 for the Rizzoli book?</p> <p>15 A. That is correct.</p> <p>16 Q. We've gotten that established?</p> <p>17 A. Right.</p> <p>18 Q. Are you familiar with the</p> <p>19 photographs in those books?</p> <p>20 MR. SERBAGI: Objection to form.</p> <p>21 A. I have seen photographs of images</p> <p>22 in both of those books.</p> <p>23 Q. Have you seen, have you actually</p> <p>24 seen the books?</p> <p>25 A. I see one of the books right there</p>
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<p>1 Stevens</p> <p>2 A. I have seen registrations for the</p> <p>3 Ballantine and Rizzoli books.</p> <p>4 Q. Have you seen registrations for</p> <p>5 any individual picture contained in the</p> <p>6 Ballantine or Rizzoli books?</p> <p>7 (Record read)</p> <p>8 A. Have I seen -- can you repeat the</p> <p>9 question again, please?</p> <p>10 (Record read)</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 A. I will repeat that I have seen</p> <p>13 registrations for the Ballantine book, the</p> <p>14 images in the Ballantine book. Really I</p> <p>15 would have to look at the -- in order to</p> <p>16 really answer that question, I would have</p> <p>17 to look at the specific registrations that</p> <p>18 refer to the Ballantine book and the</p> <p>19 Rizzoli book. But I have seen documents</p> <p>20 that relate to copyright registrations of</p> <p>21 those books.</p> <p>22 Q. And the question I'm asking is if</p> <p>23 you have seen registrations of the</p> <p>24 photographs in the books as individual</p> <p>25 photographs.</p>	<p>1 Stevens</p> <p>2 on the table. Both books on the table.</p> <p>3 Q. Before seeing them sitting here on</p> <p>4 a stack on my desk, have you seen them</p> <p>5 before?</p> <p>6 A. To the best of my recollection, I</p> <p>7 have seen the Rizzoli book. I can't tell</p> <p>8 you when. I was aware of its existence a</p> <p>9 while ago. I have never seen the</p> <p>10 Ballantine book.</p> <p>11 Q. Do you know if either the Rizzoli</p> <p>12 or the Ballantine books are maintained in</p> <p>13 the archives of SFA?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. I'm really not sure, but I could</p> <p>16 ask our archivist.</p> <p>17 Q. That would be Edith Marcus?</p> <p>18 A. Yes.</p> <p>19 MR. SERBAGI: When you're done</p> <p>20 with this line of questioning, we've</p> <p>21 been going for an hour and five, can</p> <p>22 we take a break? When you're done</p> <p>23 with this line.</p> <p>24 Q. So in preparation for today's</p> <p>25 deposition, you did not look at the</p>

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<p>1 Stevens</p> <p>2 Rizzoli book or the Ballantine book?</p> <p>3 A: That's not completely true. In</p> <p>4 preparation for this deposition, I</p> <p>5 reviewed the documents that I was required</p> <p>6 to view. Among those documents, I have</p> <p>7 seen photocopies of the Rizzoli book and</p> <p>8 the Ballantine book.</p> <p>9 Q. And those photocopies contain</p> <p>10 copies of photographs?</p> <p>11 A. That is correct. It's very post</p> <p>12 modern.</p> <p>13 Q. And the question that I would ask,</p> <p>14 with respect to any of those specific</p> <p>15 photographs, you had seen a separate</p> <p>16 copyright registration certificate?</p> <p>17 MR. SERBAGI: Objection to form.</p> <p>18 A. Once again, I'm not -- can you</p> <p>19 repeat the question? I'm not entirely</p> <p>20 sure what you mean.</p> <p>21 Q. You have stated that you have seen</p> <p>22 a registration certificate for the Rizzoli</p> <p>23 book and for the Ballantine book?</p> <p>24 A. Yes.</p> <p>25 Q. You have stated that each book</p>	<p>1 Stevens</p> <p>2 follows:)</p> <p>3 MR. SLOTNICK: I'm going to ask</p> <p>4 the court reporter to mark as Exhibit</p> <p>5 2 the book which we have alluded to,</p> <p>6 which is a book entitled Marilyn</p> <p>7 Monroe, The Life, the Myth, otherwise</p> <p>8 known as the Rizzoli book.</p> <p>9 I'm sorry, we only have one copy</p> <p>10 of this, but this is what we have got.</p> <p>11 (Defendants' Exhibit 2, Book</p> <p>12 entitled, Marilyn Monroe, The Life, The</p> <p>13 Myth, marked for identification, as of</p> <p>14 this date.)</p> <p>15 BY MR. SLOTNICK:</p> <p>16 Q. I'm going to ask you to take a</p> <p>17 look at what's been marked as Defendants'</p> <p>18 Exhibit 2. For brevity, we'll call it the</p> <p>19 Rizzoli book.</p> <p>20 Is this the book you said you have</p> <p>21 seen photographs of?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And this is the book that you</p> <p>24 looked at, or a photocopy of that book is</p> <p>25 what you looked at to prepare for the</p>
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<p>1 Stevens</p> <p>2 contains photographic images which you</p> <p>3 have also seen in preparation for today?</p> <p>4 A. That is correct.</p> <p>5 Q. I'm saying, in preparation for</p> <p>6 today, did you see a separate registration</p> <p>7 certificate for a specific photograph that</p> <p>8 is contained in the book?</p> <p>9 MR. SERBAGI: Objection to form.</p> <p>10 A. I still have the same answer. I'm</p> <p>11 not entirely sure what you mean by that.</p> <p>12 If you would like to show me a document,</p> <p>13 I'm happy to look at it. I have seen</p> <p>14 quite a few documents, and I'm certain</p> <p>15 that I have seen registrations for each of</p> <p>16 those books, but I really cannot recall at</p> <p>17 this moment whether or not I have seen</p> <p>18 specific -- I can't even remember your</p> <p>19 exact wording, but my answer is, I can't</p> <p>20 recall, but I'm happy to look at the</p> <p>21 documents.</p> <p>22 MR. SLOTNICK: Let's take a</p> <p>23 break.</p> <p>24 (Thereupon, a recess was taken,</p> <p>25 and then the proceedings continued as</p>	<p>1 Stevens</p> <p>2 deposition?</p> <p>3 A. That is correct.</p> <p>4 Q. And to the best of your knowledge,</p> <p>5 was it a photocopy of the entire book or</p> <p>6 just sections of it?</p> <p>7 A. I would have to really see the</p> <p>8 photographs again to verify page by page,</p> <p>9 but I have seen photographs of a</p> <p>10 significant -- of at least a significant</p> <p>11 portion of the book.</p> <p>12 Q. I'm going to ask you to look at</p> <p>13 what appears to be an unnumbered page and</p> <p>14 specifically look at the top of the page,</p> <p>15 which says, "Published on the occasion of</p> <p>16 the exhibition Marilyn Lomito" and a list</p> <p>17 of names under collectors and lenders.</p> <p>18 A. Okay.</p> <p>19 Q. Was this one of the pages that you</p> <p>20 looked at in preparation for today's</p> <p>21 deposition?</p> <p>22 A. I really do not recall seeing this</p> <p>23 page, but it is possible that it was in</p> <p>24 the documents.</p> <p>25 Q. Do you notice the name Edith Shaw</p>

13 (Pages 46 to 49)

Melissa Stevens

Page 50	Page 52
<p>1 Stevens</p> <p>2 Marcus?</p> <p>3 A. After scanning the page, I do not</p> <p>4 see her name, but if it is there, you can</p> <p>5 point it out to me.</p> <p>6 MR. SERBAGI: It would be helpful</p> <p>7 to have a copy of this.</p> <p>8 MR. SLOTNICK: We're running on a</p> <p>9 tight shoestring. It's hard to find</p> <p>10 this book.</p> <p>11 Q. I'm going to make a little mark</p> <p>12 next to it with a pen. I'm not changing</p> <p>13 the book at all.</p> <p>14 Do you see Marcus's name there</p> <p>15 now?</p> <p>16 A. Yes, I see it now.</p> <p>17 Q. Do you know why she is listed as a</p> <p>18 lender?</p> <p>19 MR. SERBAGI: Objection to form.</p> <p>20 A. No, I don't. I would have to get</p> <p>21 a definition of what lender means.</p> <p>22 Q. Do you know what it is that she</p> <p>23 may have lent to the exhibit?</p> <p>24 MR. SERBAGI: Objection to form.</p> <p>25 A. Can you repeat the question,</p>	<p>1 Stevens</p> <p>2 pages.</p> <p>3 Q. Are those photographs -- are those</p> <p>4 pages something that you looked at in</p> <p>5 preparation for the deposition today?</p> <p>6 A. Yes, they are.</p> <p>7 Q. And other than looking at those</p> <p>8 specific photographs, is there anything</p> <p>9 else that you viewed relating to those</p> <p>10 photographs in preparation for today?</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 A. It's a very broad question. Could</p> <p>13 you please specify?</p> <p>14 Q. Sure.</p> <p>15 You stated that you looked at the</p> <p>16 registration certificate for the Rizzoli</p> <p>17 book, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Were there any other documents</p> <p>20 relating to this Rizzoli book that you</p> <p>21 looked at?</p> <p>22 MR. SERBAGI: Objection to form.</p> <p>23 A. It's possible that some of the</p> <p>24 legal papers that are part of the</p> <p>25 pleadings might refer to the concepts</p>
Page 51	Page 53
<p>1 Stevens</p> <p>2 please?</p> <p>3 (Record read)</p> <p>4 A. What she may have lent?</p> <p>5 Q. Or did lend.</p> <p>6 MR. SERBAGI: Objection.</p> <p>7 A. I do not know what it is.</p> <p>8 Q. So you don't know why she is</p> <p>9 listed under collectors and lenders?</p> <p>10 MR. SERBAGI: Objection. Form.</p> <p>11 A. I don't know why.</p> <p>12 Q. So consequently, you don't know</p> <p>13 what she lent, if she lent anything?</p> <p>14 A. Well, once again, if you supply me</p> <p>15 with more information, such as what</p> <p>16 Rizzoli intended by the word collectors</p> <p>17 and lenders, I might be able to respond</p> <p>18 better, but I really can't answer the</p> <p>19 question without more information.</p> <p>20 Q. There are a number of pages in the</p> <p>21 book that I have tabbed with yellow</p> <p>22 Post-Its, and I would like you to take a</p> <p>23 look at some of those photographs, please.</p> <p>24 A. Sure.</p> <p>25 Okay, I have looked at the marked</p>	<p>1 Stevens</p> <p>2 we're discussing today.</p> <p>3 Q. Do you mean the pleadings in the</p> <p>4 lawsuit against Rizzoli?</p> <p>5 A. By legal papers, I mean papers</p> <p>6 prepared by attorneys, and I believe that</p> <p>7 a lot of the documents I have seen</p> <p>8 potentially relate to issues that I'm here</p> <p>9 to discuss for the deposition.</p> <p>10 Q. Do you know the difference between</p> <p>11 a letter and a document filed with the</p> <p>12 court, pleading, an answer, a complaint?</p> <p>13 MR. SERBAGI: Objection to form.</p> <p>14 A. Well, I'm certainly not an</p> <p>15 attorney. Do I know the difference -- can</p> <p>16 you repeat your question, between a letter</p> <p>17 and a what?</p> <p>18 Q. And a complaint.</p> <p>19 A. I can't give you a legal</p> <p>20 definition of the difference. If you show</p> <p>21 me a document and tell me it's a letter,</p> <p>22 I'm happy to look at it, versus a document</p> <p>23 that's a complaint.</p> <p>24 Q. Let's stick with the more -- you</p> <p>25 have testified that you have seen these</p>

14 (Pages 50 to 53)

Melissa Stevens

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<p>1 Stevens</p> <p>2 photographs in the Rizzoli book, and you</p> <p>3 testified that you have seen a copy of the</p> <p>4 registration certificate, and you</p> <p>5 testified that you have seen what you call</p> <p>6 certain documents relating to some of the</p> <p>7 legal issues, and I'm asking you to tell</p> <p>8 me in any category you wish what those</p> <p>9 documents were.</p> <p>10 MR. SERBAGI: Objection to form.</p> <p>11 A. Once again, it's a very general</p> <p>12 question. I'm happy to look at a specific</p> <p>13 document, if you have something in mind.</p> <p>14 I cannot recall.</p> <p>15 MR. SLOTNICK: I'll ask the</p> <p>16 reporter to mark this as Exhibit 3.</p> <p>17 (Defendants' Exhibit 3,</p> <p>18 Complaint, marked for identification,</p> <p>19 as of this date.)</p> <p>20 BY MR. SLOTNICK:</p> <p>21 Q. I'm showing you what's been marked</p> <p>22 as Defendants' Exhibit 3, which is</p> <p>23 identified as a complaint in the action</p> <p>24 Sam Shaw versus Rizzoli international.</p> <p>25 Is this a document you recall</p>	<p>1 Stevens</p> <p>2 Q. Do you understand what this</p> <p>3 document is?</p> <p>4 A. Well, I'm not an attorney, but I</p> <p>5 would have to read the whole thing right</p> <p>6 now to really truly refresh my memory of</p> <p>7 it. But I think I generally have an</p> <p>8 understanding.</p> <p>9 Q. And what is your general</p> <p>10 understanding?</p> <p>11 A. My general understanding is</p> <p>12 that -- my general understanding of the</p> <p>13 situation is that Sam Shaw wrote text and</p> <p>14 submitted a photo for -- to -- for the</p> <p>15 purpose of a catalog, and I generally</p> <p>16 understand that -- my general knowledge of</p> <p>17 the situation is that he was unaware that</p> <p>18 this book was going to be published or was</p> <p>19 published, and I believe that they used</p> <p>20 his text and perhaps the photo that he</p> <p>21 supplied in the book and he disagreed with</p> <p>22 that use.</p> <p>23 Q. And is your answer to my question</p> <p>24 based solely upon reading the complaint?</p> <p>25 A. I recall seeing the complaint</p>
Page 55	Page 57
<p>1 Stevens</p> <p>2 seeing in preparation for today's</p> <p>3 deposition?</p> <p>4 A. Yes, I recall seeing this</p> <p>5 document.</p> <p>6 Q. When exactly did you look at the</p> <p>7 document?</p> <p>8 A. Sometime in the past week.</p> <p>9 Q. And without going into specific</p> <p>10 discussions, when you reviewed the</p> <p>11 document, was anyone else present while</p> <p>12 you reviewed the document?</p> <p>13 A. No.</p> <p>14 Q. Was there ever a time where you</p> <p>15 reviewed this document in the presence of</p> <p>16 counsel?</p> <p>17 MR. SERBAGI: Objection. It's a</p> <p>18 yes or no.</p> <p>19 A. No.</p> <p>20 Q. Was there ever a time where you</p> <p>21 had discussions regarding this document</p> <p>22 with counsel?</p> <p>23 MR. SERBAGI: Objection. You can</p> <p>24 answer yes or no.</p> <p>25 A. No.</p>	<p>1 Stevens</p> <p>2 amongst the documents that I was provided</p> <p>3 for preparation today, and I also believe</p> <p>4 that I am a member of the family, I have</p> <p>5 been around, and am answering generally</p> <p>6 because I do remember conversations</p> <p>7 amongst the family about this issue.</p> <p>8 Q. And what family members did you</p> <p>9 have those conversations with?</p> <p>10 A. I really can't recall a specific</p> <p>11 person. I remember the issue. I</p> <p>12 believe -- I'm not sure what year this</p> <p>13 was. Was it in the 90s, 1990s?</p> <p>14 Q. Yes.</p> <p>15 A. Right, 1996 is the date on the</p> <p>16 complaint. So it is more than ten years</p> <p>17 ago. I remember the issue. I remember</p> <p>18 mention of Rizzoli at the time, and I</p> <p>19 remember that there was a legal action</p> <p>20 that my grandfather, Sam Shaw, took</p> <p>21 against Rizzoli publications.</p> <p>22 Q. Do you know what the disposition</p> <p>23 of that legal action was?</p> <p>24 A. Can you define disposition?</p> <p>25 Q. Do you know what the court ruled?</p>

15 (Pages 54 to 57)

Melissa Stevens

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<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to the</p> <p>3 form.</p> <p>4 A. I do not know what the court</p> <p>5 ruled, but I'll happy to look at that</p> <p>6 piece of paper if you have it.</p> <p>7 Q. Are you aware that certain</p> <p>8 photographs of your grandfather's were</p> <p>9 placed in the public domain?</p> <p>10 A. That's a legal conclusion I cannot</p> <p>11 make.</p> <p>12 Q. I'm not asking you to make a legal</p> <p>13 conclusion. I'm not even asking you to</p> <p>14 agree with my legal conclusion.</p> <p>15 I'm just asking you to -- I'm --</p> <p>16 asking you a question of fact. Are you</p> <p>17 aware that the court ruled that certain of</p> <p>18 your grandfather's photographs embodied in</p> <p>19 the Rizzoli book are in the public domain?</p> <p>20 MR. SERBAGI: Objection to the</p> <p>21 form.</p> <p>22 A. I'm aware that there was a</p> <p>23 court -- you're calling it ruling. I'm</p> <p>24 not an attorney, so I'm going to stay away</p> <p>25 from using legal jargon that I don't know</p>	<p>1 Stevens</p> <p>2 MR. SLOTNICK: Okay, if you can</p> <p>3 identify the Bates number.</p> <p>4 Q. So you're not familiar other than</p> <p>5 the settlement that there was a court</p> <p>6 ruling or court decision or any kind of</p> <p>7 determination by the court regarding</p> <p>8 public domain nature of certain books?</p> <p>9 MR. SERBAGI: Objection to the</p> <p>10 form.</p> <p>11 A. It's a long question. Can you</p> <p>12 please repeat it to me?</p> <p>13 Q. Are you familiar with any court</p> <p>14 determination in regard to any of your</p> <p>15 grandfather's works in the Rizzoli works?</p> <p>16 MR. SERBAGI: Objection to form.</p> <p>17 A. I'm aware there was some sort of</p> <p>18 settlement regarding this legal dispute.</p> <p>19 Q. That's all you're aware of?</p> <p>20 MR. SERBAGI: Objection to form.</p> <p>21 A. I'm aware of this complaint. I</p> <p>22 gave a general understanding of the</p> <p>23 situation surrounding the complaint, and I</p> <p>24 am aware that there was a judge involved</p> <p>25 in this lawsuit, and I'm aware that there</p>
Page 59	Page 61
<p>1 Stevens</p> <p>2 the exact meaning of, but I am aware of</p> <p>3 that situation to which you refer.</p> <p>4 Q. So you're aware there was a</p> <p>5 lawsuit?</p> <p>6 A. Yes, I am.</p> <p>7 Q. And you're aware that the lawsuit</p> <p>8 ultimately ended?</p> <p>9 MR. SERBAGI: Objection.</p> <p>10 A. I am aware that there was a</p> <p>11 settlement.</p> <p>12 Q. Settlement. What was the</p> <p>13 settlement?</p> <p>14 A. I believe money exchanged hands,</p> <p>15 but, once again, I would have to verify</p> <p>16 that.</p> <p>17 Q. Is there a document that would</p> <p>18 identify that settlement?</p> <p>19 A. There might be.</p> <p>20 Q. I'm going to ask you to produce</p> <p>21 that document.</p> <p>22 MR. SERBAGI: If we have it, we</p> <p>23 certainly will.</p> <p>24 It's my understanding we gave</p> <p>25 that to you already.</p>	<p>1 Stevens</p> <p>2 was a settlement of some sort.</p> <p>3 Q. How are you aware of the</p> <p>4 settlement?</p> <p>5 A. Once again, because I'm a member</p> <p>6 of the family, and I have been involved in</p> <p>7 different capacities with the family</p> <p>8 business over the years.</p> <p>9 Let me qualify that by saying this</p> <p>10 complaint is dated 1996, so SFA did not</p> <p>11 exist at that time obviously, but Sam Shaw</p> <p>12 is my grandfather, and I was very close to</p> <p>13 him.</p> <p>14 Q. Let me show you what's been marked</p> <p>15 as Exhibit 4.</p> <p>16 (Defendants' Exhibit 4, Decision</p> <p>17 dated March 19, 1999, marked for</p> <p>18 identification, as of this date.)</p> <p>19 BY MR. SLOTNICK:</p> <p>20 Q. The court reporter gave you what</p> <p>21 was marked as Defendants' Exhibit 4, which</p> <p>22 is a copy of a March 19, 1999 decision,</p> <p>23 the U.S. District Court for the Southern</p> <p>24 District of New York in the case Sam Shaw</p> <p>25 and others versus Rizzoli and others.</p>

16 (Pages 58 to 61)

Melissa Stevens

Page 62	Page 64
<p>1 Stevens</p> <p>2 I will say since I think you said</p> <p>3 you're not a lawyer that this may be found</p> <p>4 in other formats. Let me ask a question</p> <p>5 before you go too far in looking.</p> <p>6 If you look at the top, there are</p> <p>7 a number of names in capital letters. As</p> <p>8 counsel will stipulate with me that those</p> <p>9 are the names of the parties in the</p> <p>10 lawsuit. I notice Sam Shaw, and I also</p> <p>11 notice the name of Edith Shaw Marcus.</p> <p>12 Do you know why Edith Shaw Marcus</p> <p>13 was named as a party to this lawsuit?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. I do not.</p> <p>16 Q. Did you make inquiry into that</p> <p>17 prior to coming here today?</p> <p>18 A. I just answered that. I was not</p> <p>19 aware that she was a party to it, so it</p> <p>20 would have been hard to ask.</p> <p>21 Q. Well, you could have asked and</p> <p>22 gotten answers and said we don't know.</p> <p>23 MR. SERBAGI: Objection.</p> <p>24 A. I don't understand.</p> <p>25 Q. Never mind.</p>	<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to form.</p> <p>3 A. I think you just asked me two</p> <p>4 questions. Can you please repeat that?</p> <p>5 (Record read)</p> <p>6 A. I do not recall seeing this</p> <p>7 document.</p> <p>8 MR. SLOTNICK: I'll ask the</p> <p>9 reporter to mark this as the next</p> <p>10 exhibit, please.</p> <p>11 (Defendants' Exhibit 5, Rule 56.1</p> <p>12 Statement, marked for identification,</p> <p>13 as of this date.)</p> <p>14 BY MR. SLOTNICK:</p> <p>15 Q. I'll ask you to look at what's</p> <p>16 been marked as Defendants' Exhibit 5,</p> <p>17 which is identified as a Rule 561</p> <p>18 statement of material facts in the Sam</p> <p>19 Shaw versus Rizzoli case.</p> <p>20 Do you recall seeing this document</p> <p>21 before?</p> <p>22 A. I do not recall seeing this</p> <p>23 document.</p> <p>24 Q. So this is not a document that you</p> <p>25 looked at in preparation for today's</p>
Page 63	Page 65
<p>1 Stevens</p> <p>2 I'm going to ask you to look at</p> <p>3 page 9 of 17 of this document. I will ask</p> <p>4 you -- specifically you will see in the</p> <p>5 middle of the page, there are footnotes 6</p> <p>6 and 7, and then there is a paragraph and</p> <p>7 footnote 7. I ask you to just read that</p> <p>8 paragraph.</p> <p>9 A. Beginning with "in their most</p> <p>10 recent brief"?</p> <p>11 Q. Yes.</p> <p>12 A. Okay.</p> <p>13 Q. And you see the last sentence of</p> <p>14 that paragraph states, "To the extent that</p> <p>15 the plaintiffs now concede that United</p> <p>16 States copyright applies, it is plain as</p> <p>17 explained below that the 105 photographs</p> <p>18 are in the public domain and summary</p> <p>19 judgment must be granted dismissing the</p> <p>20 copyright infringement claims as to those</p> <p>21 photographs."</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do see it.</p> <p>24 Q. Have you seen that document in</p> <p>25 preparation for today's deposition?</p>	<p>1 Stevens</p> <p>2 deposition?</p> <p>3 A. I do not recall seeing this</p> <p>4 document, however, if it is a part of the</p> <p>5 documents that you submitted, I believe</p> <p>6 that you submitted 23 boxes full of</p> <p>7 documents, so I did the best I could with</p> <p>8 it.</p> <p>9 Q. What does that mean, you did the</p> <p>10 best that you could?</p> <p>11 A. I'm just qualifying my answer. So</p> <p>12 I have not seen this document, but perhaps</p> <p>13 it's part of the documents that you</p> <p>14 submitted, and because there was so many</p> <p>15 of them, I did my best to prepare for</p> <p>16 today.</p> <p>17 Q. Explain to me what you did to</p> <p>18 actually prepare for today's deposition?</p> <p>19 MR. SERBAGI: Asked and answered.</p> <p>20 Q. You can answer.</p> <p>21 A. I reviewed my company's files. I</p> <p>22 reviewed the documents that relate to</p> <p>23 today's deposition. I talked to people in</p> <p>24 my company, and I also talked to some</p> <p>25 people that we do business with.</p>

17 (Pages 62 to 65)

Melissa Stevens

Page 66	Page 68
<p>1 Stevens</p> <p>2 Q. When you say your company files,</p> <p>3 which files did you look at?</p> <p>4 A. I looked at accounting documents,</p> <p>5 statements, for example, I looked at</p> <p>6 correspondence, faxes, e-mails, letters,</p> <p>7 et cetera. I also looked at contracts and</p> <p>8 agreements that we have.</p> <p>9 Q. Were you provided with any</p> <p>10 documents to specifically look at for</p> <p>11 today's deposition?</p> <p>12 MR. SERBAGI: Objection. You can</p> <p>13 say yes or no.</p> <p>14 A. Yes.</p> <p>15 Q. And what documents were you</p> <p>16 provided to specifically look at for this</p> <p>17 deposition?</p> <p>18 MR. SERBAGI: Objection.</p> <p>19 A. I believe you possess those</p> <p>20 documents. There are a lot of them.</p> <p>21 Q. I'm asking you specifically what</p> <p>22 you looked at that you were provided for</p> <p>23 today's deposition.</p> <p>24 A. A large stack of paper.</p> <p>25 Q. Who provided those documents to</p>	<p>1 Stevens</p> <p>2 It's a general question, and my</p> <p>3 general answer is, for example, the</p> <p>4 company documents that I looked at for</p> <p>5 today were provided to me by my company,</p> <p>6 specific people that work in my company,</p> <p>7 documents that are available to me because</p> <p>8 I work in a company, so to a certain</p> <p>9 extent, I guess I could say I provided</p> <p>10 them to myself. In addition, my attorneys</p> <p>11 provided me with certain documents.</p> <p>12 Q. The documents that your company</p> <p>13 provided you, were those documents</p> <p>14 provided at anyone's direction to the best</p> <p>15 of your knowledge?</p> <p>16 MR. SERBAGI: Objection to form.</p> <p>17 Q. Did you ask for the documents?</p> <p>18 A. It's a very general question.</p> <p>19 Some documents by definition are available</p> <p>20 to me because I work for the company, so</p> <p>21 there are files that are available to me</p> <p>22 because of that.</p> <p>23 Did I specifically -- I might have</p> <p>24 specifically in the course of the past</p> <p>25 month, so it's possible that I</p>
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<p>1 Stevens</p> <p>2 you?</p> <p>3 MR. SERBAGI: Objection.</p> <p>4 A. It depends. I looked at papers</p> <p>5 that are available to my company, so they</p> <p>6 are company documents.</p> <p>7 Q. I'm sorry if I'm not being clear.</p> <p>8 MR. SERBAGI: She is answering</p> <p>9 the question.</p> <p>10 MR. SLOTNICK: She is not.</p> <p>11 Q. But go ahead, you can continue.</p> <p>12 MR. SERBAGI: That is an improper</p> <p>13 statement. She was in the middle of</p> <p>14 her answer.</p> <p>15 A. So I reviewed my company files and</p> <p>16 I also reviewed the pleadings of this</p> <p>17 case. I prepared for the deposition as</p> <p>18 stated in the notice of deposition, so I</p> <p>19 read documents related to that, to today.</p> <p>20 Q. I'm not looking for what you</p> <p>21 looked at. I'm looking for the name of</p> <p>22 the person or persons who provided you</p> <p>23 with documents. That's the question I</p> <p>24 asked.</p> <p>25 A. Okay.</p>	<p>1 Stevens</p> <p>2 specifically requested certain documents</p> <p>3 and had particular questions that I would</p> <p>4 then direct to individuals in my company</p> <p>5 who may or may not have been more informed</p> <p>6 about a particular issue than I am.</p> <p>7 I did my best to become informed.</p> <p>8 I don't know if that answers your question</p> <p>9 or not.</p> <p>10 Q. Can you identify the specific</p> <p>11 people who provided documents to you that</p> <p>12 you reviewed in preparation for today?</p> <p>13 A. I believe I already answered that.</p> <p>14 Q. I'm looking for specific names.</p> <p>15 A. Specific names of people that</p> <p>16 provided documents to me for preparation</p> <p>17 for today?</p> <p>18 Q. Yes.</p> <p>19 A. Edith Marcus might have assisted</p> <p>20 me. Meta Stevens may have assisted me.</p> <p>21 Susan Shaw might have also assisted me.</p> <p>22 My attorneys furnished me with documents.</p> <p>23 Q. What documents did your attorneys</p> <p>24 furnish you with?</p> <p>25 MR. SERBAGI: Objection. You're</p>

18 (Pages 66 to 69)

Melissa Stevens

Page 70	Page 72
<p>1 Stevens</p> <p>2 not entitled to inquire as to</p> <p>3 documents that I gave her or didn't</p> <p>4 give her.</p> <p>5 MR. SLOTNICK: I'm just asking a</p> <p>6 question. You can object to it and</p> <p>7 direct her not to answer, if you want.</p> <p>8 MR. SERBAGI: I'm going to direct</p> <p>9 the witness not to answer that.</p> <p>10 A. I will not answer on the advice of</p> <p>11 my attorney.</p> <p>12 Q. You already said you were going to</p> <p>13 listen to your lawyer. I respect that.</p> <p>14 I believe you stated, but it has</p> <p>15 been so long ago, that you don't recall</p> <p>16 seeing the Rule 51.6 statement?</p> <p>17 A. What is the Rule 51.6 statement?</p> <p>18 Q. The statement that is sitting in</p> <p>19 front of you as Exhibit 5.</p> <p>20 A. I do not recall seeing this</p> <p>21 document.</p> <p>22 Q. Do you recall any document, seeing</p> <p>23 any document that identified certain works</p> <p>24 as being in the public domain?</p> <p>25 MR. SERBAGI: Objection to form.</p>	<p>1 Stevens</p> <p>2 Q. Would it be accurate to</p> <p>3 characterize those generally as part of</p> <p>4 the flying skirt series of photographs?</p> <p>5 MR. SERBAGI: Objection to form.</p> <p>6 A. Some of them are part of the</p> <p>7 flying skirt series.</p> <p>8 Q. Which ones are?</p> <p>9 A. Which ones are?</p> <p>10 Q. Are.</p> <p>11 A. Would you like me to point to</p> <p>12 them?</p> <p>13 Q. Yes.</p> <p>14 A. This one, this one, this one, this</p> <p>15 one, this one, this one, and this one.</p> <p>16 Q. So is it accurate to say that the</p> <p>17 only photograph that is not part of the</p> <p>18 flying skirt series is the red, rather</p> <p>19 large red photograph or drawing on page</p> <p>20 146?</p> <p>21 MR. SERBAGI: Objection to form.</p> <p>22 A. I really can't say. It certainly</p> <p>23 doesn't look like it is part of the</p> <p>24 series. However, I'll qualify my answer</p> <p>25 by saying it is a photo of just her head,</p>
Page 71	Page 73
<p>1 Stevens</p> <p>2 A. Can you repeat the question,</p> <p>3 please?</p> <p>4 Q. I'll ask it a different way. Why</p> <p>5 don't you look at page 2.</p> <p>6 Do you recall seeing any document</p> <p>7 in preparation for today dealing with</p> <p>8 photographs on pages 146 and 147 that</p> <p>9 dealt with whether or not those works were</p> <p>10 in the public domain?</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 A. What are the photos on page 146</p> <p>13 and 147?</p> <p>14 Q. The book is in front of you.</p> <p>15 We're talking about the Rizzoli book.</p> <p>16 A. I will now go to page 146 and 147</p> <p>17 in the Rizzoli book. Could you repeat</p> <p>18 your question?</p> <p>19 (Record read)</p> <p>20 MR. SERBAGI: Objection to form.</p> <p>21 MR. SLOTNICK: I'll withdraw the</p> <p>22 question.</p> <p>23 Q. Have you seen these photographs</p> <p>24 before, the ones on page 146 and 147?</p> <p>25 A. Yes, I have.</p>	<p>1 Stevens</p> <p>2 so I would have to say probably part of</p> <p>3 the photo, the larger photo that it</p> <p>4 belongs to.</p> <p>5 Q. "Her" being Marilyn Monroe?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know how many photographs</p> <p>8 are actually in the flying skirt series?</p> <p>9 MR. SERBAGI: Objection to form.</p> <p>10 A. Did you say how many photos are</p> <p>11 approximately in?</p> <p>12 Q. Yes.</p> <p>13 A. I really don't know.</p> <p>14 Q. Do you know if it is more than the</p> <p>15 10 photographs that you pointed to?</p> <p>16 MR. SERBAGI: Objection.</p> <p>17 A. I believe it is more than these</p> <p>18 10, yes.</p> <p>19 Q. Do you know if it is more than 25?</p> <p>20 A. I really don't know, but I'm happy</p> <p>21 to look at -- I would have to look at my</p> <p>22 collection.</p> <p>23 Q. In preparing for today's</p> <p>24 deposition, did you review what both</p> <p>25 parties have called the flying skirt</p>

19 (Pages 70 to 73)

Melissa Stevens

Page 74	Page 76
<p>1 Stevens</p> <p>2 series?</p> <p>3 MR. SERBAGI: Objection to form.</p> <p>4 A. That is a general question. I</p> <p>5 have seen these photos, and I have looked</p> <p>6 at them in preparation for today, and it</p> <p>7 is my understanding that they are</p> <p>8 considered what both parties have called</p> <p>9 the flying skirt series.</p> <p>10 Q. And I'm asking you whether in</p> <p>11 preparation for today you have looked at</p> <p>12 other photographs third-party flying skirt</p> <p>13 series?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. It's possible that I looked at</p> <p>16 other photographs that also would be</p> <p>17 considered a part of this series.</p> <p>18 Q. And you looked at these</p> <p>19 photographs this week, last week?</p> <p>20 A. I have seen these --</p> <p>21 MR. SERBAGI: Objection to form.</p> <p>22 A. I have seen photos that would be</p> <p>23 considered part of the flying skirt series</p> <p>24 my entire life.</p> <p>25 Q. I'm only asking you what you did</p>	<p>1 Stevens</p> <p>2 answer your question because you have</p> <p>3 asked me, you specifically said the entire</p> <p>4 series. So it's hard for me to answer</p> <p>5 that question.</p> <p>6 Q. Let's ask it a different way.</p> <p>7 Did you ask -- this is only</p> <p>8 dealing with what you requested -- did you</p> <p>9 request seeing any of the photographs in</p> <p>10 the flying skirt series other than the</p> <p>11 ones in the Rizzoli book?</p> <p>12 MR. SERBAGI: Objection to form.</p> <p>13 A. Well, I cannot recall specifically</p> <p>14 requesting, as you have stated in your</p> <p>15 question, however, in preparation for</p> <p>16 today, I did review company files and</p> <p>17 amongst the files I also reviewed are our</p> <p>18 archive and our collection of images.</p> <p>19 I believe I have been directed to</p> <p>20 answer in regards to the Ballantine and</p> <p>21 Rizzoli book, so I'm answering in regards</p> <p>22 to this Rizzoli book right here in front</p> <p>23 of me. I have prepared for today by</p> <p>24 looking at these photographs. Perhaps</p> <p>25 there are other ones that relate. I'm</p>
Page 75	Page 77
<p>1 Stevens</p> <p>2 in preparation for today's deposition.</p> <p>3 A. In preparation for today's</p> <p>4 deposition, I looked at these photos that</p> <p>5 are in front of me right now, and I looked</p> <p>6 at the documents that were provided to me.</p> <p>7 So is it possible that there is a flying</p> <p>8 skirt photo in the other documents, it's</p> <p>9 possible. If you want to show me a</p> <p>10 particular document, I can tell you if I</p> <p>11 have seen it.</p> <p>12 Q. Did you request in preparation for</p> <p>13 today that someone provide you with the</p> <p>14 entire flying skirt series of photographs?</p> <p>15 MR. SERBAGI: Objection to form.</p> <p>16 A. Can you repeat the question,</p> <p>17 please?</p> <p>18 (Record read)</p> <p>19 MR. SERBAGI: Objection.</p> <p>20 A. In preparation for today, I have</p> <p>21 looked at a number of photographs that</p> <p>22 could be considered a part of the flying</p> <p>23 skirt series. As I said previously, I</p> <p>24 cannot pinpoint an exact number of</p> <p>25 photographs, so it would be hard for me to</p>	<p>1 Stevens</p> <p>2 happy to look at those if you would like</p> <p>3 to show them to me and I can clarify</p> <p>4 whether or not I have seen them or was</p> <p>5 requested to see them.</p> <p>6 Q. I'm going to ask you to turn --</p> <p>7 you're still in Exhibit 5. If you go past</p> <p>8 the numbered pages of the Rule 56.1</p> <p>9 statement, you will come across a page</p> <p>10 that's identified at the bottom as page</p> <p>11 17, and at the top it says "Shaw versus</p> <p>12 Rizzoli, Sam Shaw, 05-29-97".</p> <p>13 A. You said at the bottom of the page</p> <p>14 it says page 17?</p> <p>15 Q. Yes.</p> <p>16 A. Got it.</p> <p>17 Q. I'll represent to you that this</p> <p>18 constitutes a section of the deposition of</p> <p>19 your grandfather in the Shaw versus</p> <p>20 Rizzoli case.</p> <p>21 Do you recall seeing this in</p> <p>22 preparation for your deposition?</p> <p>23 A. I do not.</p> <p>24 Q. I'm going to ask you to read what</p> <p>25 is the segment that is identified as page</p>

20 (Pages 74 to 77)

Melissa Stevens

Page 78	Page 80
<p>1 Stevens</p> <p>2 76, which is the center section.</p> <p>3 A. Sure.</p> <p>4 MR. SERBAGI: I'd like to note</p> <p>5 for the record that none of these</p> <p>6 documents have production numbers, and</p> <p>7 to my knowledge, they have not been</p> <p>8 produced to us although they are</p> <p>9 clearly relevant.</p> <p>10 MR. SLOTNICK: They are documents</p> <p>11 presumably from your own clients</p> <p>12 files, but, okay.</p> <p>13 MR. SERBAGI: Well, you say</p> <p>14 presumably.</p> <p>15 MR. SLOTNICK: Your client</p> <p>16 testified that she has files related</p> <p>17 to this lawsuit and she looked at</p> <p>18 documents relating to the lawsuit.</p> <p>19 THE WITNESS: I'm not sure I</p> <p>20 testified to that.</p> <p>21 MR. SERBAGI: We'll talk about it</p> <p>22 later.</p> <p>23 Q. Please look at page 77 as well and</p> <p>24 78.</p> <p>25 A. Okay.</p>	<p>1 Stevens</p> <p>2 grandfather testified, "Yes, I designed, I</p> <p>3 laid out the composition, the design. I</p> <p>4 was assigned by Billy Wilder, Charlie</p> <p>5 Feldman producers to come up with a logo</p> <p>6 for the picture. I knew that that would</p> <p>7 become the logo."</p> <p>8 Are you familiar with the fact</p> <p>9 that your grandfather was assigned the</p> <p>10 task by Billy Wilder and Charlie Feldman?</p> <p>11 A. Which task are you referring to?</p> <p>12 Q. To lay out the composition and the</p> <p>13 design and come up with the logo?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. I am familiar -- I'm familiar with</p> <p>16 the fact that Sam Shaw was the author of</p> <p>17 the concept of these photos, concept</p> <p>18 behind them, design behind them, and that</p> <p>19 he took them.</p> <p>20 Q. And how are you familiar with</p> <p>21 those facts?</p> <p>22 A. Well, these are some of the most</p> <p>23 seen images in the world. And Sam Shaw</p> <p>24 was my grandfather, and I spent my entire</p> <p>25 life knowing that he took these photos.</p>
Page 79	Page 81
<p>1 Stevens</p> <p>2 Q. Thank you.</p> <p>3 You'll see at the top right under</p> <p>4 where it says page 76, it says, on pages</p> <p>5 146 and 147 and skipping ahead to 149,</p> <p>6 "Did you take this photo?" The A part of</p> <p>7 the Q and A is, I will represent to you,</p> <p>8 the testimony of your grandfather.</p> <p>9 Are you familiar with the fact</p> <p>10 that your grandfather took those pictures</p> <p>11 on 147, 1347 and 149?</p> <p>12 MR. SERBAGI: Objection to form.</p> <p>13 A. Can you repeat the question? Am I</p> <p>14 familiar with the fact that he took these</p> <p>15 photos?</p> <p>16 Q. Did your grandfather take the</p> <p>17 pictures on 146, 147 and 149 to the best</p> <p>18 of your knowledge?</p> <p>19 A. To the best of my knowledge, he</p> <p>20 took most of them. I believe on page 146,</p> <p>21 the photo of Marilyn Monroe, just her head</p> <p>22 that appears on Modern Man, is credited to</p> <p>23 Weegee, who is the photographer. It's</p> <p>24 actually spelled wrong on here.</p> <p>25 Q. On page 77, it's line 9, your</p>	<p>1 Stevens</p> <p>2 Q. Do you know who Billy Wilder was?</p> <p>3 A. Yes.</p> <p>4 Q. Who was he?</p> <p>5 A. He is a very famous writer and</p> <p>6 director, amongst probably other things,</p> <p>7 producer maybe.</p> <p>8 Q. He was the director of The 7 Year</p> <p>9 Itch?</p> <p>10 A. I think so. I'm not positive.</p> <p>11 Q. And Charlie Feldman was the</p> <p>12 producer of The 7 Year Itch?</p> <p>13 A. It is my understanding that that</p> <p>14 is correct.</p> <p>15 Q. Is it your understanding that, as</p> <p>16 your grandfather said, he was assigned to</p> <p>17 come up with a logo by them?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. I know that he had an arrangement</p> <p>20 with Charlie Feldman to come up with this</p> <p>21 concept. He staged it, and he took the</p> <p>22 photos. It was part of the publicity</p> <p>23 campaign that I believe also my</p> <p>24 grandfather was in charge of for this</p> <p>25 film.</p>

21 (Pages 78 to 81)

Melissa Stevens

Page 82	Page 84
<p>1 Stevens</p> <p>2 Q. So when you say -- so they asked</p> <p>3 him to do this and he did it?</p> <p>4 MR. SERBAGI: Objection to form.</p> <p>5 A. I cannot tell you exactly what</p> <p>6 they asked him to do. Obviously, I wasn't</p> <p>7 even alive in 19 -- I believe it was the</p> <p>8 fifties. So I really can't say.</p> <p>9 Q. But whether in your capacity as an</p> <p>10 employee of SFA or as a family member, you</p> <p>11 have never heard anything that would</p> <p>12 contradict what your grandfather had sworn</p> <p>13 to in this deposition?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. Can you repeat your question,</p> <p>16 please?</p> <p>17 (Record read)</p> <p>18 MR. SERBAGI: Objection.</p> <p>19 A. That's a very broad question.</p> <p>20 Q. I'll accept a broad answer.</p> <p>21 MR. SERBAGI: Objection.</p> <p>22 A. Which testimony are you referring</p> <p>23 to?</p> <p>24 Q. Let's break it down.</p> <p>25 You stated that your grandfather</p>	<p>1 Stevens</p> <p>2 photographs of the flying skirt series</p> <p>3 that appear in that film.</p> <p>4 Q. And he did that because someone</p> <p>5 requested that he do that?</p> <p>6 MR. SERBAGI: Objection. We're</p> <p>7 getting far afield from what's at</p> <p>8 issue in this case.</p> <p>9 MR. SLOTNICK: We're talking</p> <p>10 about depositions in the Rizzoli case.</p> <p>11 I don't know how we're far afield.</p> <p>12 MR. SERBAGI: Because you're</p> <p>13 talking about issues that are far</p> <p>14 afield.</p> <p>15 MR. SLOTNICK: I disagree with</p> <p>16 the characterization, but if you want</p> <p>17 the witness not to answer any of these</p> <p>18 questions, it's certainly your right</p> <p>19 to tell her not to answer anything.</p> <p>20 I'm perfectly comfortable with going</p> <p>21 to the court with those directions if</p> <p>22 you want. I'm asking a question. She</p> <p>23 thought my question was too general.</p> <p>24 I'm trying to be specific, I'm trying</p> <p>25 to eliminate all of the things that</p>
Page 83	Page 85
<p>1 Stevens</p> <p>2 had an arrangement with Charlie Feldman?</p> <p>3 A. Yes.</p> <p>4 Q. Regarding 7 Year Itch?</p> <p>5 A. Yes.</p> <p>6 Q. Is it your understanding that your</p> <p>7 grandfather produced the film 7 Year Itch?</p> <p>8 MR. SERBAGI: Objection.</p> <p>9 MR. SLOTNICK: Trying to</p> <p>10 eliminate things.</p> <p>11 A. It is not my understanding.</p> <p>12 Q. Is it your understanding that</p> <p>13 Charlie Feldman produced the film?</p> <p>14 MR. SERBAGI: Objection.</p> <p>15 A. Yes, that is my understanding.</p> <p>16 Q. Is it your understanding that</p> <p>17 Billy Wilder directed the film?</p> <p>18 A. It is my understanding that he</p> <p>19 did.</p> <p>20 Q. Is it your understanding that your</p> <p>21 grandfather took certain photographs for</p> <p>22 the film?</p> <p>23 MR. SERBAGI: Objection.</p> <p>24 A. It is my understanding that my</p> <p>25 grandfather took some of the very famous</p>	<p>1 Stevens</p> <p>2 couldn't possibly have been within her</p> <p>3 understanding.</p> <p>4 You can direct your witness to do</p> <p>5 whatever you want.</p> <p>6 MR. SERBAGI: I'll give you some</p> <p>7 leeway.</p> <p>8 A. Can you please reread the question</p> <p>9 to me?</p> <p>10 (Record read)</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 Q. You can answer.</p> <p>13 A. It is my understanding that Sam</p> <p>14 Shaw and the producer of the 7 Year Itch,</p> <p>15 Charles Feldman, worked together and were</p> <p>16 friends. And that they had an arrangement</p> <p>17 which allowed Sam Shaw to, let's say,</p> <p>18 which made him in charge of the concept</p> <p>19 and execution of this particular publicity</p> <p>20 campaign, the taking of the photographs,</p> <p>21 et cetera. I don't know if that answers</p> <p>22 your question.</p> <p>23 Q. It does.</p> <p>24 You said that they had an</p> <p>25 arrangement. Was that arrangement ever</p>

22 (Pages 82 to 85)

Melissa Stevens

Page 86	Page 88
<p>1 Stevens</p> <p>2 reduced to writing?</p> <p>3 MR. SERBAGI: Objection to form.</p> <p>4 A. I really can't say. I imagine --</p> <p>5 well, I shouldn't guess, so I won't guess.</p> <p>6 Q. You have never seen such a</p> <p>7 document?</p> <p>8 A. No, I have not.</p> <p>9 Q. Do you know whether Sam Shaw was</p> <p>10 paid pursuant to that arrangement?</p> <p>11 MR. SERBAGI: Objection. What</p> <p>12 does that have to do with the Rizzoli,</p> <p>13 Ballantine books?</p> <p>14 MR. SLOTNICK: It has an</p> <p>15 extraordinary amount to do with it. I</p> <p>16 don't feel that I have to explain that</p> <p>17 to you. If you want her not to</p> <p>18 answer, you can tell her not to</p> <p>19 answer.</p> <p>20 A. I do not know whether or not he</p> <p>21 was paid.</p> <p>22 Q. Let's go down to page 78, line 5.</p> <p>23 "Did the producers pay you for</p> <p>24 these photographs?" The answer is "Yes,</p> <p>25 paid me for the assignment, the overall</p>	<p>1 Stevens</p> <p>2 A. I believe I previously stated that</p> <p>3 I'm generally -- it is my general</p> <p>4 understanding that they had an arrangement</p> <p>5 that put Sam Shaw in charge of this</p> <p>6 publicity campaign. You could probably</p> <p>7 also define it as other things, but, for</p> <p>8 example, it is also considered a publicity</p> <p>9 campaign, and my grandfather, Sam Shaw,</p> <p>10 was in charge of it. By that I mean, it</p> <p>11 was his concept. He executed the concept</p> <p>12 and subsequently it became one of the most</p> <p>13 recognizable images in the world.</p> <p>14 Q. Let's talk about that.</p> <p>15 When you say it became one of the</p> <p>16 most recognizable images in the world,</p> <p>17 what is your basis for that statement?</p> <p>18 A. The basis for that statement is,</p> <p>19 of course, starts with me and my existence</p> <p>20 in the world.</p> <p>21 Q. Presumably that's not a direct</p> <p>22 causal relationship?</p> <p>23 A. Well, I have talked to a lot of</p> <p>24 people who have said that to me. I</p> <p>25 believe there was recently -- I think, for</p>
Page 87	Page 89
<p>1 Stevens</p> <p>2 assignment."</p> <p>3 MR. SERBAGI: I object to the use</p> <p>4 of this exhibit. It wasn't produced</p> <p>5 to us. The witness has nothing to do</p> <p>6 with it.</p> <p>7 Q. Do you have any reason not to</p> <p>8 believe what your grandfather's sworn</p> <p>9 testimony was?</p> <p>10 MR. SERBAGI: Objection.</p> <p>11 A. Do I have reason not to believe --</p> <p>12 no, I don't have reason unless you gave me</p> <p>13 reason, unless someone gives me reason.</p> <p>14 Q. Fair enough.</p> <p>15 Without beating what is already a</p> <p>16 clearly dead horse here, you have</p> <p>17 testified that your grandfather and</p> <p>18 Charlie Feldman had an arrangement.</p> <p>19 Do you know any of the specifics</p> <p>20 of that arrangement?</p> <p>21 MR. SERBAGI: Objection to form.</p> <p>22 A. I have a general understanding of</p> <p>23 the arrangement.</p> <p>24 Q. And what is that general</p> <p>25 understanding?</p>	<p>1 Stevens</p> <p>2 example, if I recall correctly, the BBC</p> <p>3 had some sort of a television program, it</p> <p>4 might have been a documentary film, I'm</p> <p>5 not sure exactly, but it was certainly</p> <p>6 something that was broadcast in which they</p> <p>7 named and went through the stories of some</p> <p>8 of the most recognizable images in the</p> <p>9 world, and the skirt flying series was</p> <p>10 named by the BBC, I think it was -- let me</p> <p>11 clarify -- of the 20th Century</p> <p>12 photography.</p> <p>13 MR. SERBAGI: When you finish</p> <p>14 with this line, it's about time for a</p> <p>15 break.</p> <p>16 MR. SLOTNICK: Let me go another</p> <p>17 10, 15 minutes.</p> <p>18 Q. I was actually expecting a simpler</p> <p>19 answer, so let me go there.</p> <p>20 You said this was part of a</p> <p>21 publicity campaign for the film?</p> <p>22 MR. SERBAGI: Objection.</p> <p>23 A. Once again, I wasn't there. I</p> <p>24 wasn't alive in the 1950s. It is my</p> <p>25 general understanding that Sam Shaw was in</p>

23 (Pages 86 to 89)

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<p>1 Stevens</p> <p>2 charge of a publicity campaign for the</p> <p>3 film.</p> <p>4 Q. What is your understanding of what</p> <p>5 a publicity campaign is?</p> <p>6 MR. SERBAGI: Objection to form.</p> <p>7 A. My general understanding is --</p> <p>8 let's see, how can I describe this?</p> <p>9 It's my general understanding that</p> <p>10 a publicity campaign is a way to promote,</p> <p>11 in this case, the film, 7 Year Itch, and</p> <p>12 in this particular case, the primary way</p> <p>13 in which the publicity campaign functioned</p> <p>14 was through the use of these photographs.</p> <p>15 That's my general understanding.</p> <p>16 Q. So they publicized the film by</p> <p>17 publicizing the photographs?</p> <p>18 MR. SERBAGI: Objection to the</p> <p>19 form.</p> <p>20 A. They promoted, I would say that</p> <p>21 they promoted the film through the use of</p> <p>22 images that also appear in the film.</p> <p>23 Q. But did they also include the</p> <p>24 flying skirt series or parts of the flying</p> <p>25 skirt series?</p>	<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to form.</p> <p>3 A. I have seen the term special</p> <p>4 photographer in documents.</p> <p>5 Q. Do you know what that term means?</p> <p>6 MR. SERBAGI: Objection to form.</p> <p>7 A. I can't be certain.</p> <p>8 MR. SLOTNICK: Why don't we take</p> <p>9 a break.</p> <p>10 MR. SERBAGI: Come back around</p> <p>11 1:30.</p> <p>12 (Thereupon, a recess was taken,</p> <p>13 and then the proceedings continued as</p> <p>14 follows:)</p> <p>15 AFTERNOON SESSION</p> <p>16 (Time noted: 1:43 p.m.)</p> <p>17 MELISSA STEVENS, resumed</p> <p>18 and testified as follows:</p> <p>19 EXAMINATION BY (Cont'd.)</p> <p>20 MR. SLOTNICK:</p> <p>21 Q. Miss Stevens, you mentioned a name</p> <p>22 early this morning. Is it Michelle</p> <p>23 Minieri at Bradford?</p> <p>24 A. I did mention her.</p> <p>25 Q. How do you spell Minieri?</p>
Page 91	Page 93
<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to</p> <p>3 "they".</p> <p>4 A. Who is "they".</p> <p>5 Q. The publicity campaign. Were the</p> <p>6 flying skirt photographs used as part of</p> <p>7 the publicity campaign, to the best of</p> <p>8 your knowledge?</p> <p>9 MR. SERBAGI: Objection to form.</p> <p>10 A. To the best of my knowledge, it's</p> <p>11 my general understanding that Sam Shaw was</p> <p>12 in charge of a publicity campaign, and</p> <p>13 that he took photographs for the publicity</p> <p>14 campaign, and that those photos were used</p> <p>15 to promote the film.</p> <p>16 Q. Okay. Just one more small area of</p> <p>17 inquiry in this category and then we can</p> <p>18 take a break.</p> <p>19 On page 78, line 12, your</p> <p>20 grandfather said, "No, I retained the</p> <p>21 rights as special photographer. That's</p> <p>22 the tradition of the special</p> <p>23 photographer."</p> <p>24 Are you familiar with the term</p> <p>25 special photographer?</p>	<p>1 Stevens</p> <p>2 A. M-I-N-I-E-R-I.</p> <p>3 Q. Do you know what her title is at</p> <p>4 Bradford?</p> <p>5 A. President. She used to be senior</p> <p>6 vice-president.</p> <p>7 Q. How long has Bradford Licensing</p> <p>8 been affiliated with SFA?</p> <p>9 A. Since approximately 2005.</p> <p>10 Q. And what is their role with</p> <p>11 respect to SFA?</p> <p>12 A. They represent Shaw Family</p> <p>13 Archives. They are a licensing agent for</p> <p>14 us.</p> <p>15 Q. And what does that position</p> <p>16 entail?</p> <p>17 A. What position?</p> <p>18 Q. Your licensing agent.</p> <p>19 A. They facilitate license agreements</p> <p>20 on behalf of Shaw Family Archives, or</p> <p>21 licensing deals.</p> <p>22 Q. Do they have anything to do with</p> <p>23 registering copyrights in any of the</p> <p>24 photographs?</p> <p>25 A. Can you repeat the question.</p>

24 (Pages 90 to 93)

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Page 94	Page 96
<p>1 Stevens</p> <p>2 please?</p> <p>3 MR. SERBAGI: Objection.</p> <p>4 A. Registering the copyrights in what</p> <p>5 photographs?</p> <p>6 Q. Do they register copyright claims</p> <p>7 with the United States copyright office on</p> <p>8 behalf of SFA?</p> <p>9 MR. SERBAGI: Objection to form.</p> <p>10 A. Can you repeat the question to me,</p> <p>11 please?</p> <p>12 (Record read)</p> <p>13 A. To the best -- to my</p> <p>14 understanding -- I really don't know</p> <p>15 actually.</p> <p>16 Q. Are you familiar with -- do you</p> <p>17 know what a copyright registration</p> <p>18 certificate looks like?</p> <p>19 A. I have seen copyright registration</p> <p>20 certificates.</p> <p>21 Q. And you have seen them in the SFA</p> <p>22 files?</p> <p>23 A. Yes.</p> <p>24 Q. Is it your understanding that</p> <p>25 someone at SFA actually files those with</p>	<p>1 Stevens</p> <p>2 Q. We can start there.</p> <p>3 A. To give you -- to give you a good</p> <p>4 answer, I would really have to see those</p> <p>5 particular copyright registrations.</p> <p>6 Q. Okay.</p> <p>7 A. It is my understanding -- I'd have</p> <p>8 to look at the documents to see who signed</p> <p>9 them to really answer the question.</p> <p>10 Q. As a general matter, general</p> <p>11 background, are you familiar with anyone</p> <p>12 at SFA who performs the function of</p> <p>13 registering copyrights in Sam Shaw</p> <p>14 photographs?</p> <p>15 A. With respect to Ballantine and</p> <p>16 Rizzoli books?</p> <p>17 Q. No, generally.</p> <p>18 A. Generally speaking, I am aware</p> <p>19 that certain members of SFA have filed for</p> <p>20 copyright registration.</p> <p>21 Q. And which members of SFA would</p> <p>22 that be?</p> <p>23 A. Edith Shaw Marcus, Meta Stevens.</p> <p>24 I would have to really look at the</p> <p>25 particular documents to verify.</p>
Page 95	Page 97
<p>1 Stevens</p> <p>2 the copyright office or takes care of</p> <p>3 registering them?</p> <p>4 MR. SERBAGI: Objection to form.</p> <p>5 A. Can you repeat the question to me,</p> <p>6 please?</p> <p>7 Q. I'll ask it a different way.</p> <p>8 Have you ever registered a</p> <p>9 copyright for a Sam Shaw photograph with</p> <p>10 the copyright office?</p> <p>11 A. Who do you mean by you?</p> <p>12 Q. You, you.</p> <p>13 A. Me, Melissa Stevens.</p> <p>14 Q. You.</p> <p>15 A. Have I personally registered</p> <p>16 copyright -- have I personally -- repeat</p> <p>17 the question.</p> <p>18 Q. Have you personally submitted a</p> <p>19 copyright registration certificate to the</p> <p>20 United States copyright office?</p> <p>21 A. No, I have not.</p> <p>22 Q. Do you know who, if anyone, at SFA</p> <p>23 performs that function?</p> <p>24 A. With respect to Ballantine and</p> <p>25 Rizzoli books?</p>	<p>1 Stevens</p> <p>2 Q. I should have asked you this</p> <p>3 before. Are there any employees of SFA</p> <p>4 who are not family members of the Shaw</p> <p>5 family in some form or another?</p> <p>6 A. If you count our accountant, he is</p> <p>7 not a family member.</p> <p>8 Q. Is there anyone else?</p> <p>9 A. I don't think so.</p> <p>10 Q. Does SFA --</p> <p>11 A. Of course, we have hired lawyers,</p> <p>12 so --</p> <p>13 Q. This is actually a more narrow</p> <p>14 question for me. I'm talking about</p> <p>15 employees who are on the SFA payroll.</p> <p>16 A. Uh-huh.</p> <p>17 Q. On a day-to-day basis.</p> <p>18 A. And the answer is no.</p> <p>19 Q. Does SFA have a clerical staff?</p> <p>20 A. I'm not sure what you mean by</p> <p>21 clerical staff.</p> <p>22 Q. One who does filing, secretarial</p> <p>23 work, answers the phone.</p> <p>24 A. We don't have a specific position</p> <p>25 assigned to anyone in particular of that</p>

25 (Pages 94 to 97)

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Page 98	Page 100
<p>1 Stevens</p> <p>2 nature.</p> <p>3 Q. So people who do any or all of</p> <p>4 those tasks are the people that you have</p> <p>5 already identified?</p> <p>6 A. That is right.</p> <p>7 Q. Once again, just generally, you</p> <p>8 talked this morning about the maintenance</p> <p>9 of the archive with respect to</p> <p>10 photographs, images.</p> <p>11 How are non-photographic materials</p> <p>12 kept in the ordinary course of business at</p> <p>13 SFA?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. Could you be a little more</p> <p>16 specific as to what you mean by</p> <p>17 non-photographic materials?</p> <p>18 Q. Sure.</p> <p>19 Contracts, is there a separate</p> <p>20 file for contracts?</p> <p>21 A. We have a file for contracts.</p> <p>22 Q. Is that file maintained on a</p> <p>23 contracting party basis or on an image</p> <p>24 basis?</p> <p>25 MR. SERBAGI: Objection to form.</p>	<p>1 Stevens</p> <p>2 not entirely one or the other of the two</p> <p>3 options you have just given me. We</p> <p>4 file -- I'd say mostly our contracts are</p> <p>5 filed according to, let's say, by</p> <p>6 category, of who they are -- the contracts</p> <p>7 are with.</p> <p>8 Q. You say mostly, and in other</p> <p>9 cases?</p> <p>10 A. Well, I really can't recall</p> <p>11 another case at this particular moment. I</p> <p>12 mean, for example, all of our Bradford</p> <p>13 license agreements are together in the</p> <p>14 same place.</p> <p>15 (Defendants' Exhibit 6,</p> <p>16 Complaint, marked for identification,</p> <p>17 as of this date.)</p> <p>18 BY MR. SLOTNICK:</p> <p>19 Q. I'd ask you to look at Exhibit 6,</p> <p>20 which is a copy of a complaint in an</p> <p>21 action by Sam Shaw against St. Martin's</p> <p>22 Press and others.</p> <p>23 The question I will ask after you</p> <p>24 finish looking at it is whether or not you</p> <p>25 recall seeing this document before?</p>
Page 99	Page 101
<p>1 Stevens</p> <p>2 A. You have given me two options.</p> <p>3 Can you repeat those two options?</p> <p>4 Q. Let's use as an example the flying</p> <p>5 skirt profile photograph. Are you</p> <p>6 familiar with the photograph I'm talking</p> <p>7 about?</p> <p>8 A. No, I'm not.</p> <p>9 Q. You never heard the term flying</p> <p>10 skirt profile?</p> <p>11 MR. SERBAGI: Objection. Asked</p> <p>12 and answered.</p> <p>13 A. I have heard the term flying skirt</p> <p>14 series, which is what we have talked about</p> <p>15 today, but you said profile.</p> <p>16 Q. You're not familiar with that?</p> <p>17 A. I don't know what you mean by the</p> <p>18 way you stated it.</p> <p>19 Q. Let's stick with flying skirt</p> <p>20 series.</p> <p>21 Are contracts maintained in a file</p> <p>22 by flying skirt series, or would they be</p> <p>23 filed by contracting party?</p> <p>24 MR. SERBAGI: Objection.</p> <p>25 A. It's really not a -- my answer is</p>	<p>1 Stevens</p> <p>2 A. Sorry. Could you repeat the</p> <p>3 question?</p> <p>4 (Record read)</p> <p>5 A. I do not recall seeing this</p> <p>6 document.</p> <p>7 Q. Are you familiar with a lawsuit</p> <p>8 that Sam Shaw brought against St. Martin's</p> <p>9 Press?</p> <p>10 A. I'm generally familiar with it.</p> <p>11 Q. How did you come to be generally</p> <p>12 familiar with it?</p> <p>13 A. Well, on the last page of this</p> <p>14 document, it is dated 1993.</p> <p>15 Q. Yes?</p> <p>16 A. I'm generally familiar with the</p> <p>17 lawsuit because I'm a member of the</p> <p>18 family. I was alive during the time that</p> <p>19 it took place. And I had a close</p> <p>20 relationship with my grandfather, however,</p> <p>21 just to qualify, SFA did not exist in</p> <p>22 1993. It existed from 2002 on. So that's</p> <p>23 why I say I'm generally familiar with it.</p> <p>24 Q. Is SFA the owner of all of the</p> <p>25 rights to your grandfather's photographs?</p>

26 (Pages 98 to 101)

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<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to form.</p> <p>3 A. What do you mean by rights; could</p> <p>4 you specify?</p> <p>5 Q. Sure.</p> <p>6 Copyright rights, right to license</p> <p>7 the work, is there anyone else that has,</p> <p>8 to your knowledge, that your grandfather</p> <p>9 left the rights to other than what now is</p> <p>10 SFA?</p> <p>11 MR. SERBAGI: Objection to form.</p> <p>12 A. I'm not sure I understand the</p> <p>13 question. Could you please repeat it?</p> <p>14 Q. I don't want to make this a</p> <p>15 mystery.</p> <p>16 Your grandfather, while he was</p> <p>17 alive, took thousands of photographs. He</p> <p>18 possessed certain legal rights based upon</p> <p>19 his taking those photographs. It is my</p> <p>20 understanding that SFA has through your</p> <p>21 mother, your aunt, and your uncle</p> <p>22 succeeded to those rights, and I'm asking</p> <p>23 if there is anyone else out there that</p> <p>24 would have a claim to those rights other</p> <p>25 than SFA?</p>	<p>1 Stevens</p> <p>2 is our understanding that those rights</p> <p>3 passed either through his Will or through</p> <p>4 a trust document into either your uncle,</p> <p>5 aunt and mother or to SFA, and I'm trying</p> <p>6 to make sure that as far as we're all</p> <p>7 understanding, that within the family,</p> <p>8 there is no one else that claims rights to</p> <p>9 these photographs?</p> <p>10 MR. SERBAGI: Objection to form.</p> <p>11 A. Once again, it's a convoluted</p> <p>12 question. Can you please repeat it,</p> <p>13 because I'm doing my best to answer, but</p> <p>14 it is a tricky question.</p> <p>15 Q. You said your grandfather passed</p> <p>16 away in 1999?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who the beneficiaries</p> <p>19 of his Will were with respect to his</p> <p>20 photographs?</p> <p>21 A. With respect to what about his</p> <p>22 photographs?</p> <p>23 Q. Possession, ownership of the</p> <p>24 photographs.</p> <p>25 A. In 1999, it is my understanding --</p>
Page 103	Page 105
<p>1 Stevens</p> <p>2 MR. SERBAGI: Objection to form.</p> <p>3 A. So the question is, is there</p> <p>4 anyone else out there besides Edith, Meta</p> <p>5 and Larry that have rights to Sam Shaw's</p> <p>6 rights?</p> <p>7 Q. Yes.</p> <p>8 A. I really don't know how to answer</p> <p>9 that question. What rights again are we</p> <p>10 talking about, copyright?</p> <p>11 Q. Copyright rights, the rights to</p> <p>12 own the photographs.</p> <p>13 MR. SERBAGI: Objection to form.</p> <p>14 A. There are two different things.</p> <p>15 Which one would you like me to respond to?</p> <p>16 Q. Let's start with the copyrights.</p> <p>17 A. So please restate the question</p> <p>18 exactly.</p> <p>19 Q. Sure. Let's do this a different</p> <p>20 way.</p> <p>21 At the time your grandfather</p> <p>22 passed away, he was possessed with</p> <p>23 physical copies of photographs, negatives,</p> <p>24 transparencies, and he was possessed with</p> <p>25 certain rights to use those objects. It</p>	<p>1 Stevens</p> <p>2 I'd have to look at his Will to really</p> <p>3 answer your question. I would have to</p> <p>4 read it line by line. In 1999, my family</p> <p>5 was in a lawsuit.</p> <p>6 Q. With whom?</p> <p>7 A. Each other.</p> <p>8 Q. So is your lack of clarity based</p> <p>9 upon not recalling what happened in the</p> <p>10 lawsuit?</p> <p>11 MR. SERBAGI: Objection to the</p> <p>12 form.</p> <p>13 A. Repeat the question. Is my --</p> <p>14 (Record read)</p> <p>15 A. No, my lack of clarity is based</p> <p>16 upon your question. I'm a little unclear</p> <p>17 about what exactly your question is.</p> <p>18 Q. How was the lawsuit amongst the</p> <p>19 members of your family resolved?</p> <p>20 MR. SERBAGI: Objection to form.</p> <p>21 A. We made a settlement in 2002.</p> <p>22 Q. And did that settlement ultimately</p> <p>23 result in the creation of SFA?</p> <p>24 A. Yes, it did.</p> <p>25 Q. I'm going to ask you to look at</p>

27 (Pages 102 to 105)

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Page 106	Page 108
<p>1 Stevens</p> <p>2 page 2 of the Sam Shaw complaint, and</p> <p>3 specifically paragraph 3.</p> <p>4 A. Okay.</p> <p>5 Q. Is it your understanding that your</p> <p>6 grandfather was, in addition to being a</p> <p>7 photographer, a creative director?</p> <p>8 MR. SERBAGI: Objection to form.</p> <p>9 A. In his lifetime?</p> <p>10 Q. Yes.</p> <p>11 A. Yes, he was also a creative</p> <p>12 director in his lifetime.</p> <p>13 Q. Do you know what a creative</p> <p>14 director does?</p> <p>15 A. I really don't.</p> <p>16 Q. Did you know that he was creative</p> <p>17 director of the 7 Year Itch?</p> <p>18 MR. SERBAGI: Objection to form.</p> <p>19 A. I really can't say. I wasn't</p> <p>20 around during that time.</p> <p>21 Q. I'm going to ask you to look at</p> <p>22 paragraph 4 of the complaint.</p> <p>23 A. Okay.</p> <p>24 Okay.</p> <p>25 Q. Paragraph 4 refers to selected</p>	<p>1 Stevens</p> <p>2 not I agree to paragraph 4. That would be</p> <p>3 a legal conclusion that I can't make.</p> <p>4 Q. Well, let's ask a different</p> <p>5 question before I ask you to read the</p> <p>6 whole thing.</p> <p>7 Is it your understanding that SFA</p> <p>8 has permitted photographs from the flying</p> <p>9 skirt series to be reproduced?</p> <p>10 MR. SERBAGI: Objection to form.</p> <p>11 A. Could you specify what photos</p> <p>12 you're referring to?</p> <p>13 Q. I'm specifying any photograph</p> <p>14 that's within the flying skirt series.</p> <p>15 MR. SERBAGI: Objection to form.</p> <p>16 A. I'm not sure we defined what all</p> <p>17 the photographs are in the flying skirt</p> <p>18 series.</p> <p>19 Q. Well, what do you understand the</p> <p>20 flying skirt series of photographs to be?</p> <p>21 A. I understand them to be</p> <p>22 photographs taken during the filming of</p> <p>23 the 7 Year Itch film, or around the</p> <p>24 filming of the 7 Year Itch, or in</p> <p>25 association with the 7 Year Itch.</p>
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<p>1 Stevens</p> <p>2 photos of the flying skirt photographs to</p> <p>3 be used by other persons. Are you</p> <p>4 familiar with that at all?</p> <p>5 MR. SERBAGI: Objection to form.</p> <p>6 A. Could you repeat the question,</p> <p>7 please?</p> <p>8 Q. Paragraph 4 indicates that your</p> <p>9 grandfather permitted selected photos of</p> <p>10 the flying skirt photographs to be</p> <p>11 reproduced.</p> <p>12 Is it your understanding that that</p> <p>13 is correct?</p> <p>14 MR. SERBAGI: Objection to form.</p> <p>15 A. Are you asking me whether or not</p> <p>16 paragraph 4 is correct?</p> <p>17 Q. Yes, to the best of your</p> <p>18 knowledge.</p> <p>19 MR. SERBAGI: Objection to form.</p> <p>20 A. Well, I'm reading paragraph 4 out</p> <p>21 of context. I could read the whole</p> <p>22 document. This is the first time I'm</p> <p>23 seeing it.</p> <p>24 Q. Okay.</p> <p>25 A. So I really can't say whether or</p>	<p>1 Stevens</p> <p>2 Q. And you and I have agreed what the</p> <p>3 terms flying skirt series means.</p> <p>4 In that context, are you aware of</p> <p>5 SFA permitting selected photographs from</p> <p>6 that series to be reproduced?</p> <p>7 MR. SERBAGI: Objection to form.</p> <p>8 As to the Rizzoli, Ballantine books.</p> <p>9 MR. SLOTNICK: Are you directing</p> <p>10 her not to answer?</p> <p>11 MR. SERBAGI: I'm saying that's</p> <p>12 the subject of this deposition.</p> <p>13 MR. SLOTNICK: Are you directing</p> <p>14 her not to answer?</p> <p>15 MR. SERBAGI: You may answer as</p> <p>16 it relates to the Rizzoli and</p> <p>17 Ballantine books.</p> <p>18 MR. SLOTNICK: I'm taking that as</p> <p>19 you're directing her not to answer</p> <p>20 with respect to anything else.</p> <p>21 Q. I'm asking you the question. I</p> <p>22 want to ask you with respect to anything</p> <p>23 other than Rizzoli and Ballantine, and I</p> <p>24 haven't heard an objection to that, and I</p> <p>25 haven't heard a direction from your</p>

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<p>1 Stevens</p> <p>2 attorney not to answer, so please answer</p> <p>3 the question.</p> <p>4 MR. SERBAGI: You may answer.</p> <p>5 Objection to form.</p> <p>6 THE WITNESS: You're permitting</p> <p>7 me to answer that question? You're</p> <p>8 advising me to answer that question?</p> <p>9 MR. SERBAGI: Yes.</p> <p>10 A. It is possible that we license</p> <p>11 some photographs from the flying skirt</p> <p>12 series.</p> <p>13 Q. And "we" being SFA?</p> <p>14 A. Yes.</p> <p>15 Q. Are you aware of Sam Shaw or any</p> <p>16 predecessor to SFA permitting selected</p> <p>17 photos from the flying skirt series to be</p> <p>18 reproduced?</p> <p>19 MR. SERBAGI: Objection to form.</p> <p>20 A. I think you have asked me two</p> <p>21 questions.</p> <p>22 Q. Answer either one of them or both</p> <p>23 in the series.</p> <p>24 MR. SERBAGI: Objection to form.</p> <p>25 A. Can you repeat the question,</p>	<p>1 Stevens</p> <p>2 reproduce any part of the series?</p> <p>3 MR. SERBAGI: Hold on.</p> <p>4 (Discussion held off the record)</p> <p>5 MR. SERBAGI: You can answer as</p> <p>6 to Ballantine and Rizzoli.</p> <p>7 I'm directing this witness not to</p> <p>8 testify about anything in her</p> <p>9 complaint which is the Ballantine,</p> <p>10 Rizzoli only.</p> <p>11 MR. SLOTNICK: You're directing</p> <p>12 the witness to answer only with</p> <p>13 respect to Ballantine and Rizzoli?</p> <p>14 A. Could you please repeat the</p> <p>15 question?</p> <p>16 (Record read)</p> <p>17 MR. SLOTNICK: So you're</p> <p>18 directing her not to answer that</p> <p>19 question?</p> <p>20 MR. SERBAGI: No, you heard what</p> <p>21 I said. It's on the record. As to</p> <p>22 Ballantine and Rizzoli.</p> <p>23 Q. I'm asking about it being</p> <p>24 reproduced by the Associated Press, which</p> <p>25 would seem to be something different, but</p>
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<p>1 Stevens</p> <p>2 because it was Sam Shaw or other</p> <p>3 predecessors?</p> <p>4 Q. Did Sam Shaw permit selected</p> <p>5 photos of the flying skirt series to be</p> <p>6 reproduced?</p> <p>7 MR. SERBAGI: Objection to form.</p> <p>8 A. In his lifetime?</p> <p>9 Q. Yes.</p> <p>10 A. Photographs from the flying skirt</p> <p>11 series have been reproduced.</p> <p>12 Q. And are -- does SFA maintain in</p> <p>13 its files documents which would confirm</p> <p>14 those reproductions authorized by your</p> <p>15 grandfather?</p> <p>16 MR. SERBAGI: Objection to form.</p> <p>17 A. You would have to give me a</p> <p>18 specific circumstance of reproduction, and</p> <p>19 then I could confirm whether or not we</p> <p>20 have files that back that up.</p> <p>21 Q. Okay.</p> <p>22 In 1954, the day after the</p> <p>23 photographs were taken in New York, the</p> <p>24 flying skirt series, did your father --</p> <p>25 grandfather, authorize Associated Press to</p>	<p>1 Stevens</p> <p>2 go ahead.</p> <p>3 A. At the advice of my attorney, I</p> <p>4 will respond that with respect to the</p> <p>5 images in the Ballantine and Rizzoli book,</p> <p>6 I would have to see those images. I don't</p> <p>7 know anything about what arrangement may</p> <p>8 or may not have existed between Sam Shaw</p> <p>9 and the Associated Press. I was not alive</p> <p>10 during the time.</p> <p>11 It is my understanding that I'm</p> <p>12 here today as a representative of Shaw</p> <p>13 Family Archives that has existed from 2002</p> <p>14 until the present day. And I am, of</p> <p>15 course, a member of my family, and I'm</p> <p>16 aware of certain circumstances that</p> <p>17 happened prior to SFA's existence.</p> <p>18 However, I do not know anything about an</p> <p>19 alleged relationship between Sam Shaw and</p> <p>20 the Associated Press.</p> <p>21 Q. Is there any member of SFA that</p> <p>22 was alive in 1954?</p> <p>23 A. Yes.</p> <p>24 Q. Who might that be?</p> <p>25 A. Meta Stevens, Edith Shaw Marcus,</p>

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